

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917

No. 23

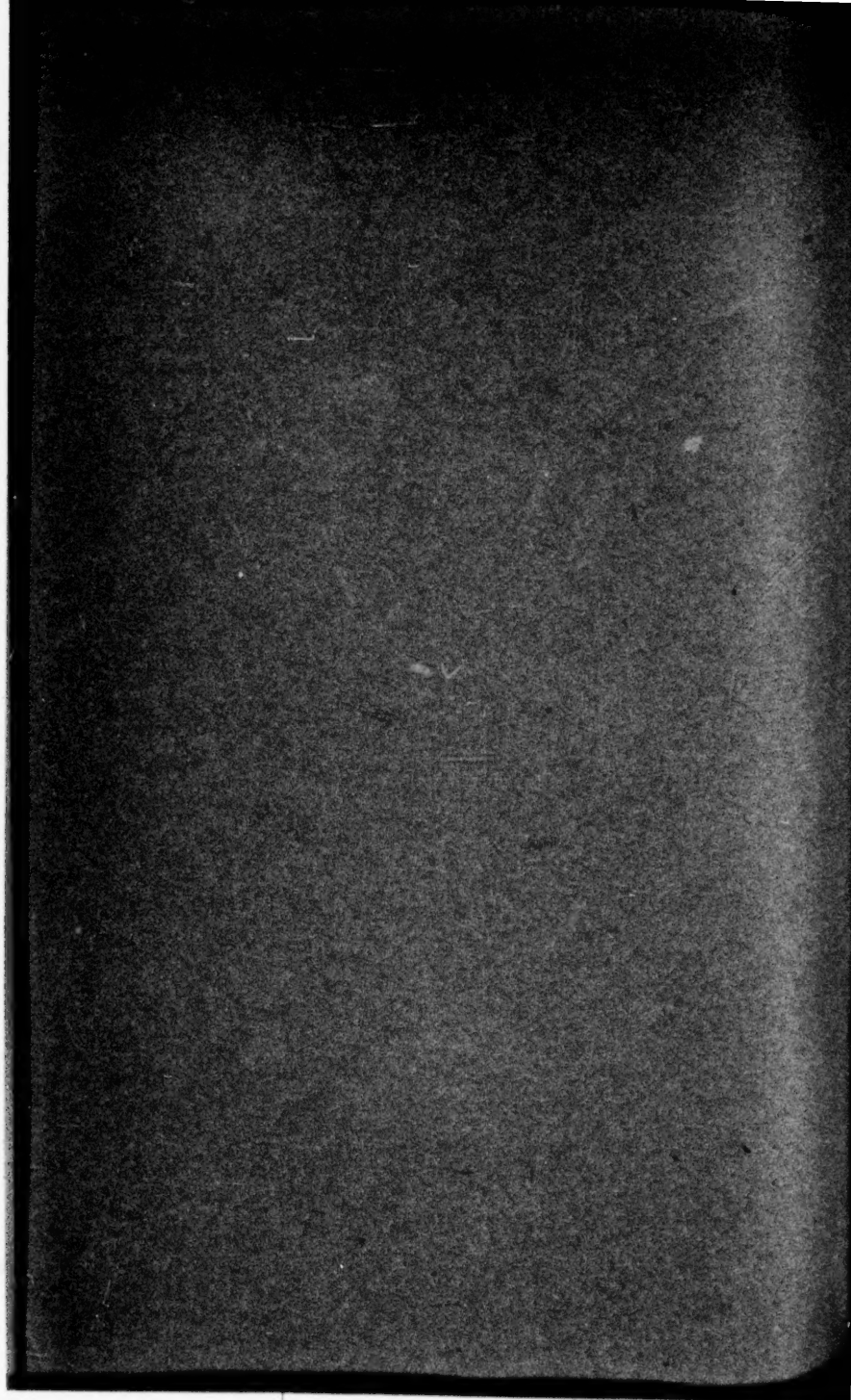
EAGLE GLASS & MANUFACTURING COMPANY,
APPELLANT.

THOMAS W. BOWE, INDIVIDUALLY AND AS PRESIDENT
OF AMERICAN FLINT GLASS WORKERS' UNION,
ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FOURTH CIRCUIT.

FILED APRIL 12, 1918.

(24,671)



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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1916.

No. 109.

EAGLE GLASS & MANUFACTURING COMPANY,
APPELLANT,

vs.

THOMAS W. ROWE, INDIVIDUALLY AND AS PRESIDENT
OF AMERICAN FLINT GLASS WORKERS' UNION,
ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FOURTH CIRCUIT.

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UNITED STATES OF AMERICA, ss:

a United States Circuit Court of Appeals for the Fourth Circuit, Begun and Held at the Court-house, in the City of Richmond, on the First Tuesday in November, Being the Third Day of the Same Month, in the Year of our Lord One Thousand Nine Hundred and Fourteen.

Present:

Hon. Martin A. Knapp, Circuit Judge.
Hon. Charles A. Woods, Circuit Judge.
Hon. Edmund Waddill, Jr., District Judge.

Among other were the following proceedings, to-wit:

WILLIAM J. HILL, JULIUS W. CRINKEY, PETER GLASSTETTER,
George H. Ross, William Greene, William E. Sillico, Harry
Thompson, and Harry E. Walker, Appellants,

vs.

EAGLE GLASS AND MANUFACTURING COMPANY, Appellee.

Appeal from the District Court of the United States for the Northern District of West Virginia, at Philippi.

Be it remembered that heretofore, to-wit, on May 25, 1914, the transcript of the record of the said District Court in the said entitled cause was transmitted to and filed in our said Circuit Court of Appeals here, which is as follows:

TRANSCRIPT OF RECORD.

Be it remembered, that, heretofore, to-wit: On the 28th day of July, 1913, came Eagle Glass and Manufacturing Company, by counsel, and filed in the clerk's office of the Circuit Court of the United States for the Northern District of West Virginia, at Philippi, its bill of complaint against Thomas W. Rowe et al., which said bill of complaint is in the words and figures following, to-wit:

Bill of Complaint.

In the District Court of the United States for the Northern District of West Virginia.

In Equity.

EAGLE GLASS AND MANUFACTURING COMPANY, a Corporation Organized under and by Virtue of the Laws of the State of West Virginia and Citizen of said State, Having Its Principal Office at Wellsburg, in said State and District, Plaintiff,

vs.

THOMAS W. ROWE, of Toledo, Ohio, and Citizen of the State of Ohio, Individually and as President of the American Flint Glass Workers' Union; William J. Croke, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-president of the American Flint Glass Workers' Union; William P. Clarke, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of the American Flint Glass Workers' Union; D. J. McGrail, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually and as Assistant Secretary of the American Flint Glass Workers' Union, and Joseph Gillooly, of Bridgeport, Ohio, and a Citizen of the State of Ohio, Individually and as a Member of the Executive Board of the American Flint Glass Workers' Union and as One of the Organizers of the American Flint Glass Workers' Union, Defendants.

2 To the Honorable Judge of the District Court of the United States for the Northern District of West Virginia:

Eagle Glass and Manufacturing Company, a corporation organized under and by virtue of the laws of the State of West Virginia and citizen of said state, having its principal office at Wellsburg, in said state and district, brings this, its bill of complaint, against Thomas W. Rowe, of Toledo, Ohio, and a citizen of the state of Ohio, individually, and as president of the American Flint Glass Workers' Union; and William J. Croke, of Toledo, Ohio, and a citizen of the State of Ohio, individually, and as vice-president of the American Flint Glass Workers' Union; and William P. Clarke, of Toledo, Ohio, and a citizen of the state of Ohio, individually, and as secretary-treasurer of the American Flint Glass Workers' Union; and D. J. McGrail, of Toledo, Ohio, and a citizen of the state of Ohio, individually, and as assistant secretary of the American Flint Glass Workers' Union; and Joseph Gillooly, of Bridgeport, Ohio, and a citizen of the state of Ohio, individually, and as a member of the Executive Board of the American Flint Glass Workers' Union, and as one of the organizers of the American Flint Glass Workers' Union, defendants.

And, therefore, your orator complains and says:

First. Your orator, Eagle Glass and Manufacturing Company, is

a corporation organized under and by virtue of the laws of the state of West Virginia, having its principal office at Wellsburg, in Brooke county, in said state; that it is the owner of certain real estate in the city of Wellsburg, in said county, state and district, upon which it has erected a large glass and manufacturing plant and buildings equipped for its use, and which it has heretofore for some years and now is using in the carrying on of its glass and manufacturing trade, which trade and business consists in the manufacturing and selling of glassware of different kinds, for different uses and purposes, to a large extent, more particularly described as gas and lighting glassware, druggists' sundries, in both glassware and metal, novelties, in both glassware and metal, oil cans from a sewing machine oiler to a locomotive oiler, and goods of other character and description, some of its glass products being made from special glassware molds for private consumers where large quantities of the product are manufactured for them under special contracts, and in the conduct of which entire business of the company the company makes use of its glassworks, its other buildings and equipments, and its metal plant, all of which are situated upon the land aforesaid and constitute its glass and manufacturing plant located in the city of Wellsburg, in the state aforesaid as aforesaid; that in the successful conduct of the company's business of manufacturing and selling as aforesaid there is a certain amount of dependency—one department upon the other; for example, one department will make the glass jar or container, and then the other department will make the metal top or cover; the glassware branch is divided into two departments, the gas and electric department and the druggist sundries department; the metal department is by itself; but the metal department has its own relation to the glass departments, and the glass departments have their own relation to the metal departments, one depending to a certain extent upon the other, and that interdependence being based upon the character of the product; the gas and electric department does half, if not more than half of the company's glassware trade, depending upon the different years in particular, but that branch of the company's trade has been increased very rapidly of late years, and during the last year has made an advance of between twenty-five and thirty per cent. over the preceding year, during which year the company has made its largest record; that your orator has been for some time past and is now engaged in manufacturing glass and metal goods as hereinbefore stated and shipping the same to the open markets of the United States, from coast to coast, Maine to California, New York to San Francisco, and from the gulf states to the lakes; that in the disposition of its gas and lighting glassware, principally the company's trade is, and it ships its said products to its customers, outside of the state of West Virginia, and which customers so without the state of West Virginia are in such portions of the United States other than the state of West Virginia as have electricity largely developed for power and for light; that the varying products of your orator's plant are shipped by railway from its plant to its customers throughout the United

States as aforesaid, mainly to states other than the state of West Virginia, the company's trade within the state of West Virginia being relatively small considering the company's output and trade; that the annual trade of your orator aggregates a large sum, to-wit: some hundred of thousands of dollars; that upon its said plant

- said company carries insurance to the amount of three hundred thousand dollars against loss by fire; that your orator has, with the exception of the occasion which will be hereinafter mentioned, run its factory continuously except for some small unimportant stoppages, daily, (Sundays excepted), for some years last passed, and for a large part of the time, while in operation, has run night and day, running night and day, (Sundays excluded), being the way its glass and manufacturing plant is now being operated; that from the character of its trade there is little if any difference in seasons, therefore your orator's plant is operated continuously; that the magnitude and character of your orator's trade and product is such that your orator's production does not keep pace with its orders, and as a result of the magnitude as well as a result of the class of product manufactured and sold and shipped to your orator's trade, your orator does not accumulate at any time, and it has not now accumulated and on hand, a sufficient amount of its manufactured product to fill its present outstanding and unfilled orders; that it has now outstanding and unfilled orders amounting in the aggregate to a very large sum of money, and to fill which orders will require of your orator its operation of its plant, under its present method of operating its plant, and operating it day and night, continuously, for more than three months next ensuing the date of the filing of this bill; that unless your orator is interfered with in the operation of its plant by the said defendants, their committees, agents, servants, confederates and associates as it is hereinafter alleged they are about to interfere, your orator expects to be able to, and says that it will, fill all of its said present outstanding unfilled orders; that the plant which is now owned and operated by your orator had for its beginning a plant which, prior to the year 1893, was owned and operated by the Nail City Stamping Company, of Wheeling, West Virginia, as its Wellsburg plant; that said Wellsburg plant was, after the breaking up of the said Nail City Stamping Company in or about the year 1893, acquired by the Paull Brothers, who have subsequently, as a partnership, having run the said Wellsburg plant for some years became the incorporators of said Eagle Glass and Manufacturing Company in 1897; that said Eagle Glass and Manufacturing Company now runs a non-union plant, and has always run its said plant non-union, and by non-union is meant that said plant is not run through association or by dealings with the American
- 5 Flint Glass Workers' Union, or with any union that is affiliated with the American Federation of Labor; that said Eagle Glass and Manufacturing Company never has been, and is not now, associated with the Associated Manufacturers, who, for some years have dealt with said American Flint Glass Workers' Union, and by joint meetings through its committees of the said

Associated Manufacturers and the American Flint Glass Workers' Union have fixed, and do now fix, wage and move list and rules and regulations under which plants employing members of the American Flint Glass Workers' Union are required by said American Flint Glass Workers' Union to and do operate; that said Eagle Glass and Manufacturing Company is distinctive in its methods of manufacturing and in the class of product which it puts upon the market; for example, it uses tanks instead of pots, for melting glass, one of the advantages of which is that the glass is always in condition to work, and there is no delay like there is in the operating of a pot furnace; that results in lessening the cost of the output; another advantage is that the capacity of the tank is many times larger than that of a pot furnace, a tank may have a capacity of a hundred tons of glass and that of a pot furnace approximately fifty percent. less; in operating for your orator's class of trade as aforesaid, there is a considerable reduction in the cost up to the point of output of finished product and therefore a very decided saving in cost of manufacturing by reason of the use of the tank system rather than of the pot system; another advantage of the tank system is that men are working in shifts continuously and without interruption owing to the glass being always melted and the men are not obliged to wait for the glass to be melted, as in the case of a pot furnace; a tank costs approximately five thousand dollars and lives for approximately six to eight years, the life of a tank will vary according to the kind of glass used in the tank; if crystal glass is produced the life of a tank is longer than if opal glass is made in it, owing to the flues or the chemical compositions used in the making of opal glass; in the carrying on of its said trade in gas and electric lighting glassware your orator has competition from other manufacturers of gas and electric lighting glassware, but so far as your orator is advised none of your orator's competitors in that trade, with the exception of one of them, makes gas and electric lighting glassware out of tank glass; the balance of your competitors in said trade make their glass and electric lighting glassware from pot glass and at a higher cost, and your orator being so advised and believing it to be true says that an effort has lately been made, and is now being continued, to bring about the unionizing of that one competitor's plant by these defendants acting individually as aforesaid and for and on behalf of said American Flint Glass Workers' Union; that your orator generally employs from four hundred to five hundred persons in the operation of its said entire plant, and it now has about four hundred and fifty persons in its employ operating its said plant; that your orator's said special line of gas and electric lighting glassware and your orator's said trade for this special line of gas and electric lighting glassware has been built up within the last five or six years, and has constantly increased.

Your orator solicits the large trade in the United States and does not solicit the small or retail trade, and in doing this your orator has aimed and does aim to sell a large volume of goods at popular prices and be enabled to keep your orator's plant running night and

day throughout the year and enable your orator to give steady employment to its men every day in the year; your orator has contracts with a number of municipal lighting companies in different cities of the United States outside of West Virginia which it expects to fill, and will fill unless interfered with by these defendants, their committees, agents, servants, confederates and associates, and if your orator were prevented from filling said orders and contracts, the nonfulfillment of them thus enforced by these defendants their committees, servants, confederates and associates as hereinafter alleged will work a hardship not only upon your orator but upon those with whom your orator has contracts; in carrying out its policy of supplying to the trade popular-priced gas and lighting glassware, your orator caters to, and constantly has, and now has on hand large contracts to supply your orator's trade for lighting large buildings throughout the United States and makes sales to large jobbers who supply that sort of trade; and that orders for this particular trade cannot be filled by your orator by purchase of the product off other manufacturers.

Your orator further says that while it was running its plant in June, 1900, and employing two hundred and seventy-five hands, all of your orator's glass works employees shortly before June 19, 1900, joined the said American Flint Glass Worker's Union and

7 made certain demands upon your orator that your orator should adopt the union scale of wages and rules in its factory and in the operation thereof, and said demands having been refused by your orator all of your orator's employees who were glassworkers at once, upon that date, and together, and in pursuance of the understanding and agreement among themselves, left your orator's employment and refused any further to operate its works and factory unless your orator should comply with and accede to the demands which had been made upon your orator by the said employees as aforesaid, and your orator having refused to place itself within the power or under the control of said American Flint Glass Workers' Union, as it conceives that it would have done had it complied with the demands which was then made upon it as aforesaid, all your orator's employees who were glass workers then, on said date, quit work and inaugurated a strike, by reason whereof plaintiff's works and factory were compelled to cease operations, and remained idle from said date, June 19th, 1900, to September 19th, 1900; that your orator persisted in refusing to recognize the American Flint Glass Workers' Union and to accede to the demands of the members thereof who had been in the employ of your orator and who went on strike as aforesaid, and that a few days prior to September 19th, 1900, your orator posted a notice outside of its factory door stating that the factory would resume operations on the above date and that all employees wishing to have employment should make application to the manager of your orator's factory, but up to the time of starting work on the 19th day of September, 1900, not one of your orator's former glass working employees made application for work, and thereupon on September 19th, 1900, your orator started its works and factory with such other persons in its employ as were willing

to work for it, and your orator then increased its operations progressively until the filing by your orator of a bill for an injunction in the Circuit Court of Brooke county, West Virginia, on the 21st day of December, in the year 1900, when, owing to said resumption of operations on September 19th, 1909, non-union and the continuing of work by your orator at its factory non-union, said strikers and their associates so interfered by gathering in crowds about your orator's works and factory, and by derisive howls and taunts of your orator's then employees, and by assaulting your said then employees,

8 your orator applied for and obtained an injunction from the said Circuit Court of Brooke county, in the state of West Virginia, which injunction was by consent of the defendants by counsel made perpetual on the 2d day of January, 1901; and your orator here files under one cover marked Exhibit No. 1 to this bill, which it asks to be taken and read as a part hereof, a certified copy of papers containing the bill of complaint filed in said suit in the Circuit Court of Brooke county on the 21st day of December, 1900, as aforesaid, the temporary injunction awarded upon said bill in said cause on December 21st, 1900, the agreement of counsel for plaintiff and counsel for defendants for the entering of an order perpetually enjoining each and all of the defendants in said cause from the doings and actions complained of embraced in the temporary injunction as aforesaid, and the final order entered January 2d, 1901, making perpetual the injunction aforesaid, to which final decree making perpetual the injunction aforesaid there is appended the consent of each defendant by his counsel.

Your orator says that following this strike which was brought about by the unionizing of your orator's then employees by the said American Flint Glass Workers' Union, and the efforts of the American Flint Glass Workers' Union at that time to compel your orator to run a union factory and to be under the jurisdiction and control of and to deal with the managing officials of said American Flint Glass Workers' Union, and during that contest over the unionizing of your orator's plant by that union, there was an explosion of nitro glycerine not far from your orator's plant; the nitro glycerine had been cached in some bushes not far from your orator's plant; the nitro glycerine was in a can of a size to contain a gallon; it was found by some children who took it to a bonfire which they had started somewhere near, and they not knowing of the danger of it, put it upon the bonfire, with the result that the can of nitro glycerine exploded and killed a number of children and wounded a number of other persons; most of the killed and injured were boys from fourteen to eighteen years of age.

During the period of time that contest over the unionizing of your orator's plant by said union was in progress, and before the union abandoned its then effort to unionize your orator's plant, your orator suffered a destruction by fire of a large part of its works, the part destroyed being your orator's stock building, decorating building, and also office building, and the only thing saved was
9 the factory in which your orator at that time was making its glass.

Your orator says that said fire occurred on a Sunday afternoon and started at a place and under circumstances which made your orator believe, and your orator so believing from information says that said fire was not accidental but was designed and was of incendiary origin.

Your orator says that it lost by reason of said fire sixty-five thousand dollars above its insurance, and further says that exclusive of said fire loss, the strike and the effort to unionize your orator's works at that time cost your orator about one hundred thousand dollars.

Your orator says that from the time the unionizing of your orator's factory was commenced by the American Flint Glass Workers' Union until their efforts to that end ceased on the part of said union a period of about two years was covered.

Your orator says that previous to the time when your orator's said employees joined said American Flint Glass Workers' Union and went out on said strike in the year 1900, your orator's employees had no grievance, had made no complaint to your orator, and your orator had not failed to comply with its then contracts with its said employees with reference to their work; your orator says that said strike at that time was ordered by the said American Flint Glass Worker's Union, and your orator's said employees went out on said strike as aforesaid in pursuance thereof for the reason that your orator refused to run its factory union and accede to the demands of the members thereof who had been in the employ of your orator and who went on strike as aforesaid and put itself under the power or control of said American Flint Glass Workers' Union.

Following the abandonment of that effort to unionize your orator's glass factory, your orator has continued to run its entire plant non-union, and successfully, to the date of the filing of this bill, without labor trouble of any kind and with no strike of its employees, and with entire satisfaction to itself and to its employees; and since the abandonment of said effort on the part of the American Flint Glass Workers' Union to unionize your orator's factory in 1900 and 1901, as aforesaid, your orator is not aware of any extended effort to organize your orator's factory by organizers by the said American

Flint Glass Workers' Union, except for a period of about six weeks four or five years ago, when said American Flint Glass Workers' Union tried by organizers to unionize your orator's glass workers, but failed, and except the effort now being made by the said American Flint Glass Workers' Union by these defendants, their committees, agents, servants, confederates and associates.

With respect to the present effort by the American Flint Glass Workers' Union, acting through these defendants, their committees, agents, servants, confederates and associates, to unionize your orator's glass workers, your orator says that about six weeks ago the defendant, Joseph Gillooly, came to Wellsburg, proceeded to get a list of the names of your orator's glass workers, met and interviewed many of them, and besought them to join the union, or if unwilling to do that, then to leave the employ of your orator, accept a union card and be furnished a job by the American Flint Glass Workers' Union at some union factory not located in Wellsburg;

Gillooly, according to statements he has made to some of your orator's men, has met with such success that he says he can and shortly shut down your orator's factory unless your orator will agree to its factory union and for such purpose recognize and contract with these defendants as the operating heads and controlling officers of the American Flint Glass Workers' Union.

Your orator says that its employees, and especially its glass workers, are satisfied with their employment with your orator, with their wages, and with their work, and that they would like to remain in your orator's employ. And in this connection your orator says that seventeen of your orator's present glass working employees in writing signed a statement that they are satisfied with their employment with your orator, with the wages paid to them, and with their work, and that they would like to remain in your orator's employ, which statement is attached to the bill and by reference hereby made part hereof.

Your orator further says that shortly after your orator became aware of the presence of and of the efforts being made by said organizer, the defendant, Joseph Gillooly, your orator called together its day turn of glass workers, and later on its night turn of glass workers, and beginning with June 12th, 1913, your orator's glass workers signed an employment card, the form and contents of which, less the date and the signature of the employee, is that which is shown by the printed card filed herewith marked Exhibit No. 2 to the bill and made part hereof, and so is as follows:

WELLSBURG, W. VA., — — —.

I am employed by, and work for, The Eagle Glass & Manufacturing Company, with the express understanding that I am not a member of the American Flint Glass Workers' Union, and will not become so while an employee of the Eagle Glass & Manufacturing Company, and that the Eagle Glass & Manufacturing Company will run non-union, and agrees with me that it will run non-union while I am in its employ. If at any time while I am employed by the Eagle Glass & Manufacturing Company I want to become connected with the American Flint Glass Workers' Union, or any affiliated organization, I agree to withdraw from the employment of said company, and I agree that while I am an employee of that company, I will not make any effort amongst its employees to bring about the unionizing of that company's glass and manufacturing plant against that company's wish.

I have either read the above or heard the same read.
— — —."

Your orator says that under date of June 10th, 1913, the defendant, Thomas W. Rowe, wrote to the president of your orator that many complaints have been made by manufacturers concerning the low selling price of goods quoted by your orator, and that on each occasion he, said defendant Rowe, has wondered whether it would not be a better condition for all concerned if the American Flint Glass Workers' Union could make an equitable

settlement with your orator's company to have your orator operate its plant in harmony with the conference agreement entered into between the "National Association of Press and Blown Glass Ware Manufacturers," having headquarters in Pittsburg, and the American Flint Glass Workers' Union, and asked your orator to meet him on Thursday, June 12th, 1913, in the office of your orator in Wellsburg, or at some convenient place in Wheeling if your orator should prefer not to have him come to Wellsburg, or in Pittsburg, if that would suit your orator better, and asked your

orator to wire him at once if it would be agreeable to your
 12 orator to hold such a meeting. To this letter your orator replied under date June 12th, 1913, by wire: "T. W. Rowe, Ohio Building, Toledo, Ohio: Letter received. Impossible to arrange to meet you." And under date of June 12th, 1913, said defendant Rowe acknowledged the receipt of said telegram by a letter in which he confirmed the language of the telegram referred to and said he was sorry your orator found it impossible to meet him, but should your orator arrange to meet him in the near future he, Rowe, would be very glad to take up the subject mentioned in his recent letter, meaning the letter of June 10th, 1913, above referred to. The said letter, dated June 10, 1913, written by the defendant, Thomas W. Rowe, reads as follows:

"TOLEDO, O., June 10/13.

Mr. S. O. Paull, President Eagle Glass Co., Wellsburg, W. Va.

DEAR SIR: I have frequently reflected on the many complaints that have been made by manufacturers concerning the low selling price of goods quoted by the Eagle Glass Co., and on each occasion I have wondered, would it not be a better condition for all concerned if we could make an equitable settlement with your company to have it operated in harmony with the conference agreements entered into between the National Association of Press and Blown Glassware Manufacturers, having headquarters in Pittsburg, and the American Flint Glass Workers' Union.

The wages paid our men are not unreasonably high, the great majority of goods produced under our jurisdiction are made on the unlimited basis, the hours of labor prevailing at Flint Glass factories are long, the general conditions are such that I feel it would impose no serious hardship upon your company should it agree to unionize their plant and then co-operate with the efforts of other manufacturers towards maintaining an equitable selling price for your products.

With these thoughts in mind, I would like very much to have a conference with you, or the representatives of your company. I intend to be in Pittsburg on Friday and Saturday of this week. If

I could meet you on Thursday, June 12, at your office in
 13 Wellsburg, or at some convenient place in Wheeling if that would suit you better, I would be very glad to arrange accordingly. I would like you to wire me at once if it is agreeable to you to hold such a meeting.

Our mutual friend, Mr. J. H. Mathews of Wellsburg, advised me

to try to arrange a meeting with you, as he thought that probably if we conferred we might be able to reach a satisfactory conclusion. Sincerely trusting I will receive a favorable reply, I am,

Yours very truly,

T. W. ROWE."

From the wage and move list of the paste mould department adopted by the Associated Manufacturers and the American Flint Glass Workers' Union in joint meeting, 1912, to continue in effect until June 30th, 1913 with respect to the manufacture of shades, the following appears on page 25: "When differently constructed shops work on the foregoing goods the cost per dozen shall be the same. This shall apply to the paste mould list."

Your orator says that said wage and move list last referred to is the present operating wage and move list of the paste mould department, and until superseded by a new agreement would apply to your orator if your orator were to run union.

From the wage and move list and rules and regulations of the iron mould blown department, adopted July, 1912, by the joint meeting of committees of the Associated Manufacturers and the American Flint Glass Workers' Union, and revised by the National Association of Press and Blown Glass Ware and the American Flint Glass Workers' Union for 1912 and 1913, your orator quotes from the general rules 1912 and 1913 as follows:

"Rule 1. The right of the manufacturer to hire and discharge employees is acknowledged, but it is to be understood that when workmen are to be hired that members of A. F. G. W. U. shall have the preference. When no competent union labor can be procured, labor can be drawn from any source.

Rule 2. When ever it is necessary to reduce the force of employees, or needed changes, a weeks' notice shall be given by the manufacturer, and under all circumstances a like notice shall be given by one or more workmen before quitting work. This does not apply in case of drunkenness, incompetency, neglect of work, or the violation of any accepted rules.

Rule 3. Four and a half hours shall constitute a turn's work in the Iron Mould Blowing Department.

Rule 4. A falling off in the number made in the move by reason of a change of moulds—if changed by the order of the manager, will entitle the shop to a turn's pay.

Rule 6. When moulds are introduced for articles not listed, they shall be worked turn work at the rate of four and a half hours per turn, until they are found to be in perfect working order, after which a move shall be established thereon by the management and workmen, and the move and wages for such articles shall be the same as for listed articles the new articles most resemble.

Rule 7. When similar articles are made in factories both day and night, the work shall be divided so that the shops shall work alternately, each week or two weeks, as may be agreed upon at the factory.

Rule 9. All proposed changes to the iron mould list must be exchanged on or before May first of each year nothing else to be

considered at summer conference. New wares offered for listing shall be considered at any meeting, provided samples are produced in evidence.

Rule 10. When work becomes slack, necessitating a reduction of the force of workmen, men shall not be discharged and work shall be divided among those competent to do it.

Rule 11. In this list both the Eastern and Western modes of working are recognized, and while there may be two blowers in the East and one blower and two gatherers in the West the amount paid to the shop is exactly alike, making the cost per dozen equal, regardless of construction of shop.

Rule 12. In case of a disagreement in any factory of the association, it shall, if possible, be settled in the factory in which it occurs. In case of a failure to agree the matter shall be referred to the Manufacturers and Workers Committee for settlement. Pending the discussion and decision of such difference, there shall be no lock-out, strike or cessation of work by either the employe or employer, and the decision of said Manufacturers and Workers Committee shall be final and binding upon the Manufacturers Association and the A. F. G. W. U. and the members thereof.

15 The A. F. G. W. U. agrees to assist the manufacturers in procuring competent workmen to fill the place of any employe who violates or refuses to abide by Rule 7."

Below rule 12 the following appears:

"Interpretation of Rule 7.

The following resolution was adopted at a conference held in Pittsburg, Pa., April 8, 1909, to emphasize Rule 7:

Resolved, we do hereby re-affirm the wisdom of our Star Island agreement relative to settling disputes, and we do hereby declare that if a dispute arises at any factory and said dispute cannot be settled locally it shall be referred to the joint conference for final adjustment, and pending a settlement of the matter there shall be no change in the working conditions; that is, work shall be continued just as if no cause for controversy or dispute had arisen, and pending a final settlement of the matter there shall be no strike, lock-out or cessation of work by either the employer or employe, and the decision of the conference committee shall be final and binding on each party."

Your orator files the above mentioned wage and move list of the paste mould department and the above mentioned wage and move list and rules and regulations of the iron mould blown department as parts hereof, and they are marked, respectively, Exhibit No. 3 and Exhibit No. 4 to this bill.

Your orator says that the American Flint Glass Workers' Union is a secret voluntary organization, having certain expressed objects; that some of its objects are lawful and that others are unlawful; that it is in the endeavor to carry out its unlawful purposes and also that it is in pursuit of its unlawful agreement, which your orator says it has, with said Associated Manufacturers, the matters and things herein complained of by your orator have arisen.

Your orator further says that while said American Flint Glass Workers' Union has certain expressed objects, some lawful and others unlawful, as hereinbefore alleged, yet that the dominant purposes of said American Flint Glass Workers' Union are unlawful, and that the said organization is an illegal one, such lawful objects as it may have being tainted with the vice of its dominant unlawful purposes, separation of said lawful and unlawful purposes being impracticable.

Your orator says that said American Flint Glass Workers' Union was organized July 1st, 1878; that it has a membership of 9,628, as shown by the report of the national secretary-treasurer, dated May 31st, 1913, and printed on page 17 in "The American Flint," the official magazine of the American Flint Glass Workers' Union, volume 4, No. 8, June 1913; that this membership is made up of persons residing in different states of the United States and who are organized into locals, with constitutions the same as or similar to the local constitution hereinafter referred to; that the said American Flint Glass Workers' Union had a balance in its treasury June 1st, 1913, of \$160,102.57, as shown by said Secretary-Treasurer Clarke's report ending May 31st, 1913, printed on page 19 of the said "The American Flint," volume 4, No. 8, June, 1913, as aforesaid; that said American Flint Glass Workers' Union has paid out for strikes and lockout benefits the sum of \$2,964,907.91, as appears from said Secretary-Treasurer Clarke's report May 31st, 1913, as printed on page 18 of said "The American Flint," volume 4, No. 8, June, 1913; that the receipts of said union for the year ending May 31st, 1913, from assessments from its members, amounted to \$119,315.32, and its total receipts amounted to \$130,262.74, while expenses charged on account of the executive board and national officers amounted to \$23,323.82, as shown by said secretary-treasurer's said report as printed on page 19 of said "The American Flint," volume 4, No. 8, June, 1913.

Indicative of the character and purpose of said American Flint Glass Workers' Union, your orator refers to and says that the following are "some of the provisions of the constitution of the American Flint Glass Workers' Union as revised and adopted by the thirty-fifth session, 1912, held at Montreal, Canada," and that following these quoted provisions of said constitution of the American Flint Glass Workers' Union are provisions of the constitutions of the local unions of the American Flint Glass Workers' Union as revised and classified by the committee appointed at the thirty-fifth session, 1912, held at Montreal, Canada.

In support hereof your orator files a copy of The American Flint, volume 4, No. 8, June, 1913, and the constitution of the American Flint Glass Workers' Union, 1912 revision and adoption, and the constitution of the local unions of the American Flint Glass Workers' Union, 1912 revision and classification, marked Exhibit No. 5, Exhibit No. 6, and Exhibit No. 7, respectively, and which are prayed to be taken and read as parts hereof.

Some of the provisions of the constitution of the American Flint

Glass Workers' Union as revised and adopted by the thirtyfifth session, 1912, held at Montreal, Canada:

National Constitution.

Article I.

Title.

Section 1. This body shall be known as the American Flint Glass Workers' Union, and shall be composed of delegates elected according to Article II, Section 3 of the Constitution.

Sec. 2. This A. F. G. W. U. has full and final jurisdiction, and is the highest tribunal of the order, and its headquarters shall be in the City of Toledo, Ohio.

Sec. 3. The seal of the A. F. G. W. U. shall be peculiar to itself. Local Union seals shall be uniform, and be furnished by the President of the A. F. G. W. U., and all documents emanating from the A. F. G. W. U. or Local Union officers shall bear the impression thereof.

Article II.

Convention Time and Delegate Laws.

Section 1. This A. F. G. W. U. shall hold a regular annual meeting on the first Monday after July 4th, at such a place as may be chosen from time to time determined upon.

Section 2. The convention alone possesses the power and authority to amend or repeal the fundamental or general laws and regulations of the Union, and fix the salary of its officers.

Section 3. Every local Union shall be entitled to one delegate for the first twenty-five members or less; one for the second twenty-five or majority fraction thereof, and after the first fifty, one for each additional fifty or majority fraction thereof. That delegates shall be elected on the basis of membership a local has on May 1. A

18 Local Unions must be paid up in full to the end of the fiscal year, May 31st, to be entitled to representation in Convention

Sec. 4. Representatives to the A. F. G. W. U. shall be elected by Local Unions annually at the first regular meeting in the month of May, and shall hold office one year, commencing the first annual session following said election, and no Local Union shall elect any National Officer as delegate.

Sec. 5. Prior to the assembling of the A. F. G. W. U. a program of the business shall be sent to the Local Unions by the Secretary of the A. F. G. W. U. containing any suggested alterations or amendments that have been sent by members of the Union officially to the Secretary of the A. F. G. W. U.

Sec. 6. A quorum for the transaction of business shall consist of a majority of the whole number of representatives elect, or if a majority of all the Local Unions under the jurisdiction of the A. F. G. W. U.

G. W. U. are represented, shall constitute a quorum for the transaction of business.

Sec. 11. That it shall be unlawful for any member to seek election as delegate to Convention, or any office represented in the trade by bribery in any form, personally or by representative, and any member found guilty of violating the same shall be fined the sum of \$50.00 and be deprived of a seat in Convention.

Sec. 12. Any local Union which shall fail to send a representative for one annual session shall be fined \$150.00, unless excused by Convention.

Sec. 13. Any member in arrears an equivalent to four months' dues for dues, fines or assessments, or any member of this Union who shall absent himself from four meetings during the year, for which the member was not excused for absence, shall not be entitled to be a representative to the National Convention or National Auditing committee, conferee or any office of this Union, and any member may enter a protest against any member who violates this section, and such protests are to be decided by the National Officers or National Convention in conformity with this section.

Sec. 15. Any member refusing to do any kind of Union work, or refusing to hold an office in the Local, shall not be entitled to represent the Local at the National Convention, and their name shall be recorded by the Recording Secretary for reference.

Sec. 17. Any local Union sending delegates to the Convention of the A. F. G. W. U. and who shall fail to live up to the laws of said Union, passed at said Convention, shall be notified by the President of the A. F. G. W. U. that they are violating the laws, and if they do not cease doing so their cards shall not be received by any Local Union of the Order of the A. F. G. W. U., and they shall not be entitled to representation in the National Convention.

Sec. 18. The salaries of the President, Vice-President, Secretary and Assistant Secretary shall be fixed by the convention, and all changes having for their object the increasing of salaries of these officers must appear in amendment sheet.

Article III.

Organization.

Section 1. The members of this Union shall use all their influence to bring all eligible workmen into this Order, so that they may form one compact body for the defense of their rights, protection of their interests, and the elevation of the mechanic to the standing he is justly entitled to.

Sec. 2. A majority of workmen in any factory or factories who are eligible to membership in this Order, united for their mutual benefit and protection, and acknowledging the jurisdiction of the A. F. G. W. U., after obtaining approval of the President of the A. F. G. W. U., shall be entitled to a seal of the same, when properly applied for upon payment of the regular cost of said seal, and

after receiving said seal shall be entitled to representation in the A. F. G. W. U.

Sec. 3. Whenever any member of this Union shall have served faithfully in the employ of any concern and whose mechanical ability is of such a quality as to entitle him to advancement, the manager of such concern shall not be allowed to discriminate against him.

Article IV.

Object of the Union.

Section 1. To create a co-operative spirit among those whose interests are alike, thereby enabling them to act promptly on any matter that may affect their interests.

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Article V.

Eligibility.

Section 1. All candidates for delegates to Convention, Conference Committee, Auditing Committee, or any other office voted on by the trade, shall be in good standing both in the Local Union and at the National Office before they can be nominated for any of the above offices.

Article VI.

Elective Officers.

Section 1. The officers of the A. F. G. W. U. shall be a President, Vice-President, Secretary, Assistant Secretary and Treasurer; the duties of the Treasurer to be performed by the National Secretary. There shall also be an Executive Board of sixty members, to be distributed as follows: Shade Branch, five; Press Branch, six, one to represent the Vault Light Workers, and one from the East. The so-called pressed and blown ware system shall be granted a special executive, to be elected by members of that department, said executive to represent his department whenever called upon. Chimney Branch, six, one an Eastern Style Worker and one from the Machine Department; Caster Place, six, two of whom shall represent the Tube Workers, one from the East and one from the West; Paste Mould Branch, six, one of whom shall represent the Bottle Ware Workers; Iron Mould Branch, five, one of whom shall represent the Opalescent Branch; Mould Making Branch, five; Cutting Branch, six, one must be from the Shade Cutting Branch and one must be from the Barware Cutters; Paste Mould Branch, six, one to represent the Table and Bar Ware Workers; Electric Bulb Branch, four, not more than two can be elected from any Local Union; Punch Tumbler and Stew Ware Branch, four; two can be elected from one Local Union, but they must represent different lines of ware in that department. Insulator Branch, one; Canadian rep-

sentative, one, the National Vice-President to be the Chairman of the Board. The above officers to be elected annually. All elections shall be by ballot, unless there is but one candidate. The Vice-President, Secretary and Assistant Secretary shall make their residence in the same city as the President.

21 Sec. 2. The nomination of Executive members shall be sent to the National office between January 1st and 31st, of each year. The Secretary of each Local Union making nominations shall send to the National Union the names of members nominated, together with a statement of the department or part of department he works in. The National President shall by circular or otherwise send the names of said candidates to the trade, to be voted on the first meeting held in March. The candidates receiving the highest number of votes shall be declared elected. Conference committee year shall be from May 1st to April 30th.

Sec. 3. No Local Union shall have the power to nominate a member of another Local for Executive unless the local first inquires as to the standing of the member and gets his consent.

Sec. 4. No Local Union shall have elected more than one Executive from each department, excepting the Machine Jar and Bottle Branch, the Chimney Branch and Caster Place department.

Article VII.

Duties of Officers.

Duties of the President.

Section 1. The position of President shall be that of an executive and all questions submitted for decision touching the laws, rules or price list must be decided by him. The President shall enforce all laws of this A. F. G. W. U., and he shall have the power to expel any member or members who engage in treasonable conduct towards the Association. During a recess he shall have general superintendence of the Order. He shall visit each Local Union personally when he deems it necessary, and if any Local Union refuses or neglects to place in his hands any books, papers, or information they possess when required for information or investigation the President may suspend such Local Union and report to the Executive Board. If approved by a majority of same, he shall notify the Local Union as soon as possible. He shall make the annual password, and he shall furnish the same to each Local Union under the jurisdiction of the A. F. G. W. U. in good standing. He shall, whenever a vacancy occurs, notify the department in which the said vacancy occurs, and said vacancy shall be nominated and filled by the vote of that department. The President of the A. F. G. W. U. shall have the power to give to each Local Union under jurisdiction of the A. F. G. W. U. their number; to name the time and place for special session of said Union. The National President shall notify all Local Unions of the institution of a new Local Union, giving the number, location and Secre-

tary's address thereof. He shall have general supervision of all circulars. He shall sign all papers and documents that require his signature to authenticate them. He shall upon written request of a majority of the Local Unions, direct a special session of the A. F. G. W. U. to be called, and shall notify by letter, each Local Union entitled to representation in the A. F. G. W. U. at least twenty days previous to the time of meeting, stating the objects of the call. It shall be his duty to watch as carefully as possible each Local Union and factory in the country by communication and visiting in person when necessary, to see if they keep all laws in strict accordance with the National Constitution and enforce as far as possible a strict observance of all laws; to see if locals are in any way working injury to the trade by low wages and high moves. He shall try and revive weak locals and organize new ones where none exist, and where new factories start; to instruct Local Unions in our laws and workings, and to do all an organizer can do to strengthen the A. F. G. W. U. and bring every eligible person into the A. F. G. W. U. as members. And he shall not hold any other place of employment while President of the A. F. G. W. U. and he shall perform such other duties as the laws, rules and usage of this Union require in addition to his actual duties. At the end of each year he shall submit a printed report of the official accounts of all National Officers and turn over all books and other property of this A. F. G. W. U. to his successor in office. For his services the President shall receive two thousand five hundred dollars per year, with all his legitimate expenses. He shall be elected for a term of one year, at each annual session. He shall also be a member of the Board of Trustees and shall furnish a bond of \$5,000 for the faithful performance of his duties as such.

Sec. 2. The National President of the A. F. G. W. U. shall impose a fine of three (\$3.00) dollars on all Local Unions neglecting to prepare and forward the quarterly report of the said Local to the National Secretary by February 28th, March 31st, August 31, and November 30th.

Duties of the Vice-President.

Sec. 3. The Vice-President shall be the Chairman of the Executive Board, Secretary to the president, and shall be held responsible for the compiling of all lists, and perform any other duty which the President may designate, and he shall not hold any other place of employment while Vice-President of the A. F. G. W. U., and for his services he shall receive the sum of fifteen hundred (\$1500) dollars per year, with all his legitimate expenses. He shall be elected for a term of one year. He shall also be a member of the Board of Trustees and shall furnish a bond of \$5,000 for the faithful performance of his duties as such.

Duties of Secretary.

Sec. 4. The position of Secretary being clerical, he shall decide all questions pertaining to the financial standing of Local Unions.

with the National Office, which decision stands without appeal until the next convention. The Secretary shall give a correct report of the proceedings of the A. F. G. W. U. He shall read all communications, reports, etc., and attest all orders drawn on the Treasurer. He shall affix the seal of this A. F. G. W. U. to all documents when necessary. He shall prepare for publication a copy of the proceedings of the A. F. G. W. U. within one month after the close of each annual or special session, and he shall make to this A. F. G. W. U. at its annual session, a complete statement of the condition of the Union, compiled from the latest reports from the local Unions, and also send to each Local Union every three months a report of the condition of each financially, the number of men employed and unemployed, the number of brothers receiving relief, the amount received from each Local Union, and the amount disbursed to each Local Union in distress. Number of apprentices and all other matter of interest to the trade to be printed at the expense of the National Union. He shall conduct the correspondence of this A. F. G. W. U. and act as Secretary at all conferences between the manufacturers and the A. F. G. W. U. He shall keep a record of the names, numbers, dates of institution and location of all Local Unions.

24 He shall have charge of the seal, books, papers and private works belonging to the A. F. G. W. U. He shall keep true and correct account between this A. F. G. W. U. and all Local Unions. He shall present to this A. F. G. W. U. at each annual session full and correct statement of the amount of money received and disbursed during the year. He shall perform such other duties as the laws and usages of this order require. He shall not hold any other place of employment while he is Secretary, and he shall receive for his services two thousand and one hundred (\$2,100) dollars per year with all of his legitimate expenses. At the end of his term of office he shall deliver to the A. F. G. W. U., or its proper officers, all property of this body and Union. He shall be elected for a term of one year at each annual session. He shall also be a member of the Board of Trustees and shall furnish a bond of \$15,000 for the faithful performance of his duties as Secretary-Treasurer and Trustee.

Duties of Assistant Secretary.

Sec. 5. The Assistant Secretary shall be under the personal supervision of the Secretary; and shall send circulars to President, Vice-President, Financial and Corresponding Secretaries and Chairmen of the Factory Committee. And any member wanting a circular shall receive one by paying his pro rata share of the expenses for sending. He shall be responsible for the correct tabulation of votes upon all questions submitted in circular to the trade, have entire charge of all supplies, and distribution of the same, and shall perform such other clerical work assigned him by the Secretary, and he shall not hold any other place of employment while Assistant Secretary of the A. F. G. W. U., and for his services he shall receive the sum of one thousand three hundred dollars (\$1,300) with all his legitimate expenses. He shall be elected for the term of one year.

He shall also be a member of the Board of Trustees and shall furnish a bond of \$5,000 for the faithful performance of his duties as Assistant Secretary and Trustee.

The Assistant Secretary of this A. F. G. W. U. shall send to each Local Union, not later than May 10th, of each year, a pamphlet containing all changes that are to be acted on at the next annual conference, and no changes shall be acted upon that do not comply with this section, or have been previously approved by the trade according to the rules governing the different departments.

25 Sec. 7. After any vote is taken, the Assistant Secretary shall tabulate the vote and furnish every Local Union with a statement giving a result of the vote, the number of each Local Union voting by yea or nay vote.

Duties of the Treasurer.

Sec. 8. The Treasurer shall hold and keep securely all moneys received by him, and pay all orders drawn on him in accordance with the laws of the Union. He shall have his account posted regularly, and ready for settlement and exhibition to the proper officers whenever they may require it; and he shall make to the A. F. G. W. U., at its annual session, a full and correct report of the condition of the A. F. G. W. U. treasury. He shall deliver to the A. F. G. W. U., or its proper officers, whenever called upon to do so, all moneys, papers and other property in his hands belonging to this body or Union. He shall deposit at such place in such manner as the Executive Board may direct, all surplus funds in his hands. The duties of the Treasurer shall be performed by the National Secretary, and he shall be elected for a term of one year at each annual session.

Board of Trustees and Their Duties.

Sec. 9. The President, Vice-President, Secretary-Treasurer and the Assistant Secretary shall constitute a Board of Trustees to be elected at each annual session. It shall be the duty of the Secretary-Treasurer to select the depositories for the funds of the Organization, subject to the approval of the Board of Trustees. All funds in excess of \$15,000.00 shall be turned over to the Board of Trustees and deposited in the name of the American Flint Glass Workers' Union, and can only be withdrawn by the presentation of an order prepared and signed by at least three members of the Board of Trustees.

Article VIII.

Vacancies.

Section 1. In case of death, resignation or removal of the President, the Vice-President shall perform the duties of President.

26 Sec. 2. Upon the death, resignation or removal of the Secretary, the Assistant Secretary shall perform the duties of the Secretary until the next annual Convention.

Sec. 3. Upon the death, resignation or removal of the Assistant Secretary, the President shall call upon the trade for nominations to fill the vacancy. The names then are submitted to the trade, who shall name his successor.

Article IX.

Duties of the Executive Board.

Section 1. The Executive Board shall constitute the Advisory Board of the President, with whom he may consult at his discretion, and during the recess shall have discretionary power, and shall act as conferees in their respective departments.

The Board shall have power to decide appeals from the decision of the President, and such decision on appeals to stand until the next session of the A. F. G. W. U., whose decision shall be final. In case of neglect of duty or violation of law on the part of any officer, the Executive Board shall have power to remove such officer, subject to appeal at the next session of the A. F. G. W. U. The Chairman of the Executive Board shall also hold the bonds of the National Officers. When a grievance occurs in any Local Union, the Secretary of the Local Union shall notify the President, who shall, if sick or disabled, select the Vice-President or some Executive Officer of said locality, representing the branch affected, who, after receiving notice, shall go to said place and procure a full and complete statement of the case, and submit the same to the President with his opinion of the chances of success or failure in case a strike is ordered. The case shall then be submitted to the different Local Unions, and work shall be continued until the Local Unions have decided according to law. It shall be the duty of each member of the Board to watch as carefully as possible each Local Union and factory in his district by communication and by visiting in person, when instructed by a National Officer, to see if they keep all the laws in strict accordance with the National Constitution, and enforce, as far as possible, a strict observance of the laws; to see if they are in any way working injury to the trade by low wages or high moves; to try and revive weak Local Unions and organize new ones where none exist and where new factories start; to instruct new Local Unions in our laws and workings, and to do all an organizer can do to strengthen the A. F. G. W. U. and bring every eligible person in his district into membership. All expenses of members of the Executive Board shall be paid by the National Union. Said members of the Executive Board shall provide the National Secretary with an itemized account of their expenses.

Sec. 2. The Conference Committee shall be called in one day before the Conference is held, if the National Officers deem it necessary.

Sec. 3. If one or more of the Conference Committee are opposed to a settlement with the Manufacturers, the agreement must be approved by the trade before becoming a law; provided the objection is of a general character to which he or they object.

Sec. 4. At the so-called summer stop conference, usually held in

March of each year, no other business shall be considered at that meeting other than the summer stop. Should it be deemed advisable to consider any other business, such as changes of moves, wages or rules, then a full representation of the Conference Committee, similar to the regular Conference Committee which meets in July of each year, shall attend to consider the same.

Article X.

Appeals and Decisions.

Section 1. After the President has rendered a decision and an appeal has been taken to the Executive Board, the vote of the Board shall stand unless the Local Union is still dissatisfied, when they shall appeal to the next Convention through the Grievance Committee, and should the action of the Grievance Committee be dissatisfactory, the Local Union or individual can take their grievance in open Convention for redress, but in no case shall anything come before the Convention that has not been acted upon by the President and Executive Board and submitted to the National Office on or before June 1st of each year, and no grievance shall be re-submitted to the Grievance Committee that has been acted upon by a former Convention, without new evidence being submitted in writing.

Sec. 2. When appeal has been taken from the decision of the President to the Executive Board, it shall be their duty to
28 cast their vote and have the same at the National Office within twenty days. Executive members disinclined to vote on subjects presented to them shall present their reason to the Assistant Secretary. Each executive asking to be excused and the executives voting and the executives not voting, shall be recorded in circular form and their names published to the trade.

Article XII.

Claims for Lost Time.

Section 1. Members who are obliged to leave their work to attend conference, executive duty or any other work, authorized by the National Office must make an effort to have his place filled and keep his shop working. Members of a shop losing time on account of gaffer or any one of the shop being called away to do work for the Association must report to the Factory Committee for work each turn. Any member failing to report for work or refusing to fill any other place offered him (if competent) shall forfeit his claim for lost time.

Sec. 2. All bills for lost time sent to the National Secretary by members of the A. F. G. W. U. shall be sent through the Local to which they belong, and must be properly signed and sealed and certified to by the Factory Committee.

Article XIII.

Seal.

Section 1. Every Local Union shall procure a seal according to the design adopted by the A. F. G. W. U., and no paper, document or communication issued by each Local Union shall be valid unless it bears such seal.

Article XIV.

Grievances.

Section 1. The A. F. G. W. U. shall support all strikes that are legalized by a majority of the popular vote of the trade, and the Corresponding Secretary of the Local Union where the grievance exists shall furnish a full and complete statement of the existing difficulty or grievance; also the number and names of men working in the factory, how many, if any, are stockholders, how many are members of the Order, how many are not members; how much money the Local Union has in its general fund, and a thorough and impartial investigation shall be made, and no strike declared legal until all honorable means of avoiding the same have been used, and that members on strike, finding employment outside of the trade, they be allowed to earn sufficient to make twelve dollars per week, including strike benefits.

Sec. 2. When a grievance occurs the case shall be reported to the Local Union by the Factory Committee, and should the Local Union deem the grievance sufficient to sustain the report of the committee, which decision shall be ascertained by a yea and nay vote, and the number of those voting yea and nay shall be forwarded with the statement, to the President of the A. F. G. W. U., who shall try to effect a satisfactory settlement of the trouble.

Sec. 3. Should the members of the trade vote favorable to the Union where the grievance exists, the men shall then cease work, and when any one part of a factory shall be engaged in a legalized strike, it shall be required that the men of all other departments shall also cease work until the difficulty is settled.

Sec. 4. Any Local Union entering upon a strike in the manner provided by the Constitution shall be sustained and receive the support of the Union, but in no case shall they be carried on the relief roll longer than one year unless by a vote of the trade. No Local Union shall submit the name of any member to the trade who is not engaged in a legalized strike to be placed on the relief roll.

Sec. 5. Any member holding a job in any factory at the time of a strike or lockout shall keep the Local Secretary informed of his location. Failing to do this he shall not receive any strike benefits for the time he could not be located. Any member not making claim for his strike benefits within 60 days after the strike began shall not be considered on the relief roll, or entitled to benefits. Suspended members at the time of the strike are not entitled to relief.

Sec. 6. Any Local Union entering into a strike after their cause

being considered insufficient, shall not be sustained or receive any support from the Order.

Sec. 7. Any member or members of any Local Union being discharged from their employment for taking an active part in
30 the affairs of this Union, either while serving on committees or otherwise, and failing after using all honorable means to have him or them reinstated to his or their situations, the case shall be referred to the Joint Committee, or Court of Appeals, pending a decision the brother shall not be laid off and the factory continue to operate, as before the trouble.

Sec. 8. When a strike is legalized, the Financial Secretary of the Local Union where the strike is in vogue shall notify the National Secretary at least once a week how said strike is progressing, the number and names of men receiving benefits and the amount.

Sec. 9. When the National President receives notice that the trade has sanctioned a strike, he shall at once prepare a written statement and have the same forwarded in circular form, to all Local Unions, warning all true men not to accept employment in such factory or factories.

Article XV.

Strikes.

Section 1. When the President of the A. F. G. W. U. receives notice of any trouble in any Local Union as provided in Article XIV, he shall immediately visit the locality or send an Officer there.

Sec. 2. After the President or Deputy have visited a Local where trouble exists, he shall prepare a statement, by circular, of grievance, how many men are out, why they are out, and how much to keep them out, and also names of men, and forward a copy to each Local Union.

Sec. 3. All members of the A. F. G. W. U. who shall be engaged in a legalized strike shall receive the sum of six dollars per week for strike benefits. No benefits shall be paid for the first two weeks of any trouble.

Sec. 4. No Local Union when on a strike shall be allowed to accept cards from members of other Local Unions with the intention of demanding strike benefits for the depositor of such card. Members on strike not having card in any Local Union and demanding strike benefits must present their claims to the Local Union which granted them a card last.

Sec. 5. Members on strike, or locked out, shall accept work at their branch of the trade when offered them, or their benefits shall cease.

31 Sec. 6. Any Local Union not working according to the rules adopted by National Convention or Conference, for the government of any branch of the trade, shall not be entitled to strike benefits.

Sec. 7. Any Local Union closing down a factory, during a dispute on any question, or pending the settlement of the said dispute, and without consulting the National Officers, shall be fined one hun-

dred (\$100.00) dollars; the said fine to be paid into the National Treasury.

Sec. 8. No strike shall be declared after the regular summer stop until all honorable means of settlement have been exhausted and negotiations with the manufacturers are broken off.

Article XVI.

Voting Propositions.

Section 1. The National Officers shall be invested with discretionary power as to what shall be submitted in Circular to the trade or departments.

Sec. 2. If a Local Union presents a proposition to be submitted to the trade or a department for its decision, and the National Officers decline to issue the same, the Local Union shall have the power to appeal in conformity with Article X of the National Constitution.

Sec. 3. Twenty days' time only for voting shall be allowed a department, the trade, or the National Executive Board, on questions submitted for their decision. Votes reaching the National Office after 20 days' time shall be filed but not counted.

Sec. 4. When a question is submitted to the vote of a department or the trade, Local Unions must hold a meeting and the vote of its members must be cast at the meeting, and only the votes of the members cast at the meeting shall be recorded and counted by the secretary and forwarded to the Assistant Secretary of the A. F. G. W. U.

Sec. 6. When a proposition is submitted to a department of the trade, only those working in that department shall be permitted to cast a vote on that department proposition. If a member works in more than one department, he shall select the department in which he is most vitally interested and cast his vote in that department.

Sec. 7. Any Local Union sending more votes to the National Office than it has members present at the meeting and voting at that meeting shall be fined \$50.00 and their vote shall not be counted.

32 Sec. 8. When appeals, petitions, or anything of a like nature, are presented to the National President, having for their object the withdrawing of funds from the National Treasury, said appeals, petitions etc., shall be referred to the General Executive Board, and they shall, by majority vote, authorize the National President as to what amount shall be mentioned in circular or otherwise, when the same shall be referred to and voted upon by the trade. Nothing in this section shall be so construed as to prohibit the National President from making such recommendations to the Executive Board as he deems advisable.

Article XVII.

Membership—Candidates.

Section 1. Application for membership shall be accompanied with full information as to what branch applicant has worked, and how

long he has worked at the trade, and only members of the branch to which he belongs shall vote on application.

Sec. 2. A foreigner applying for admission to membership shall be given a trial at work, and must prove his qualifications for membership before being admitted.

Sec. 3. If a foreigner proves his eligibility and presents a union card from an old country organization he shall be admitted to membership without his name being submitted to the trade and his initiation fee shall be three dollars.

Sec. 4. If a foreigner applying for admission does not hold a union card, his name shall be submitted to the trade, and he shall pay an initiation fee of ten dollars.

Article XVIII.

Moves and Prices.

Section 1. All Local Unions under the jurisdiction of the A. F. G. W. U. shall be governed by the move, prices and system of work which shall be adopted at each annual Conference.

Sec. 2. When a new article is introduced, the Local Union under whose jurisdiction it is made, shall have power to establish a move under the following conditions, to-wit:

First, that a sample, and if possible, the proposed move
233 and price of the article, be sent immediately to the National Office to ascertain if the article or a similar article has been made at a lower move.

Second. After the desired information has been received from the National office a special meeting shall be called and a sample of the new article produced before this meeting. The Local shall then instruct the Factory Committee as to the proper move and price to be set on the article. After the setting of the move and price in this manner, the National President shall immediately notify the trade by sending stubs of the different locals, stating the move and price, to be inserted in the price and move list until listed by conference. Any member or Factory Committee failing to comply with this rule shall be fined five dollars (\$5.00).

Sec. 3. All articles made by a new system or process shall only be listed at a special conference held in the locality where new system or process is introduced. No member of the A. F. G. W. U. shall have the right to enter into an agreement with any manufacturer without the presence of the Factory Committee. Any member violating this law shall be find the sum of \$25.00; any member of this organization found guilty of making more than the list calls for shall be fined, for the first offense, \$20.00; for the second \$50.00, and for the third offense he shall be expelled.

Article XIX.

Penalties and Privileges.

Section 1. Considerable discretion should be exercised and a Local Union should completely investigate and satisfy itself that there is

a justifiable cause for legal procedure and they should endeavor to amicably adjust matters before resorting to changes as provided by this article.

Sec. 2. When a Local Union is charged with violating the laws, rules, or trade regulations of this A. F. G. W. U., said charges shall be absolutely specific, it shall quote the law, rule, or trade regulation violated and the manner in which it is violated and submit all other connecting and incriminating information in their possession to the National President who shall make such investigation as he deems essential to satisfy himself on the subject and if he feels the charges warranted, he shall immediately arrange for a trial.

34 Sec. 3. Before any Local Union can be put on trial, the National President shall serve upon the Local Union to be put on trial, a full copy of the charges preferred in writing, not less than fifteen days before the time set for trial.

Sec. 4. Any Local Union put on trial according to this article shall place in the hands of the National President any document he may desire to further the investigation, and the said Local Union shall be entitled to produce such testimony bearing on the case as they may desire, and also employ counsel; provided, he be a member of the A. F. G. W. U.

Sec. 5. The Executive Officer presiding at the trial shall have absolute power in conducting the trial. He shall have the power to and shall exercise such power in enforcing strict order, even to the point of ejecting disturbers from the hall, so that the trial will be orderly, equitable and impartial to all concerned and after hearing all the evidence in the case and completely satisfying himself regarding the guilt, or innocence, or justifiableness in the matter, the trial shall be closed and said Executive officer shall render a complete unbiased report, with his recommendation to the National President of the A. F. G. W. U.

Sec. 6. The National Officers upon the finding of the Investigating officers shall have power to inflict such penalties as they may deem expedient, which shall stand as final unless set aside upon the appeal of the Local against which the decision is rendered. In case of any Local Union refusing to pay the penalty inflicted by the National Officers, the President shall take its seal until the penalty is complied with or the Convention remits it.

Sec. 7. Any Local Union failing or refusing to prosecute any charges preferred by any member or members of one Local Union against member or members of another Local Union when charges have been preferred in proper form, after thirty days, shall be held responsible for said charges.

Sec. 8. No Local Union shall be expelled or suspended or deprived of any of its privileges except as provided by the Constitution.

Article XX.

Disbandment.

35 Section 1. All Local Unions which shall have become defunct or suspended for non-payment of dues, or otherwise violating the Constitution, meriting suspension, may be re-

instated by making proper application to the President of the A. F. G. W. U., and paying such sums as they were in arrears at the time of disbanding, suspension or expulsion, and such fines as the President in conjunction with the Executive Board may impose upon them.

Sec. 2. Any member of a former Local Union now defunct and of which the books, etc., have not been returned to the A. F. G. W. U., as required by Section 14, Article X of the Constitution, who can procure date the Local Union became defunct, bearing the signature of the President and Recording Secretary, together with the impression of the seal of any Local Union to which he may make application may, at the discretion of the president of the A. F. G. W. U. and upon his recommendation be reinstated into such Local Union upon payment of all monthly dues from the date the Local Union became defunct, the same to be paid to the Local Union in which he is reinstated.

Sec. 3. Any Local Union disbanding or disbanded, shall immediately transmit to the Secretary of the A. F. G. W. U. all books, papers and seal, and in the event of the reorganization of said Local Union, they shall be entitled to receive back the same upon payment of the usual fee for seal.

Division or Consolidation.

Section 4. When two or more Local Unions wish to join in forming one, or where any Local Union desires to divide and form two or more Local Unions they shall apply to the National Union, and such division or consolidation can only be done with the consent of the A. F. G. W. U. in Convention assembled or by the trade.

Article XXI.

Resistance Fund.

Section 1. Two per cent. of the earnings of each member shall be collected each pay day on all wages earned and forwarded to the National Secretary, but the trade shall have the power during the recess of the A. F. G. W. U. to increase or decrease this assessment to the amount they may deem necessary to meet the trade conditions. No member shall pay assessments on wages that are not earned at any of the branches represented by the A. F. G. W. U. But members working under the jurisdiction of the A. F. G. W. U. on work not represented shall pay the regular trade assessment.

Sec. 2. There shall be one or more clerks (if necessary) appointed in each factory or shop whose exclusive duty shall be to ascertain and collect the exact amount due each pay day, and pay over the same to the Financial Secretary, who shall forward the same to the National Secretary, at least once a month, and in order to ascertain the exact amount due each pay day the members must show their

envelopes on which their pay is reported, to the clerk of each factory or shop. The expense of collecting assessments of the National Union, shall be paid by the Local.

Sec. 3. Any Local Union failing to pay their assessment, made by the President of the A. F. G. W. U., to sustain any legalized strike, shall be suspended from membership in the A. F. G. W. U.

Article XXII.

Cards.

Section 1. The National Union shall issue and keep a supply of Withdrawal Cards, Transfer Cards, Visiting Cards, Local Clearance Cards, Factory Cards and Probation Cards, and no Local Union shall grant or receive any other card than those supplied by the National Secretary, bearing the names of the President and Secretary and seal of the Local Union.

Sec. 2. Any member of the order going from one locality to another, must provide himself with a Transfer Card, and when the said card is deposited with the Factory Committee, it shall be turned over to the Financial Secretary and the member's name enrolled, and he shall be entitled to all privileges of said Local Union. Also, any boy, not a member of the Order, on account of his not being of proper age, or not having worked the required term for probation, must provide himself with a Probation card which he will deposit with the Factory Committee in the Factory where he obtains employment, each card specifying the kind of work the brother is capable of doing, whether he is a Prescription, Caster Place, Presser, Chimney or other kind of workman; and it shall be unlawful for any member or members to work with any one refusing to produce such Transfer Card. The Transfer Cards bear
 37 dues from date of issue, and a Local Union granting such card can only charge dues to date it is issued, and all cards shall be dated to the last day of each month in which they are issued; and no Probation Card shall be granted to any boy unless the Local Union under whose jurisdiction he may be working is unable to procure him further employment within one week. Any member failing to deposit his card with the Factory Committee shall be fined the sum of three (\$3.00) dollars.

Sec. 3. No person shall receive a card to change his place of work until he presents to the Financial Secretary a card from the Factory Committee showing him to have worked his notice, or to have been released by the company.

Sec. 4. Any Local Union that shall receive into their Union or allow to work under their jurisdiction, any member of any Local Union, without a proper card, shall be held responsible for all dues, fines and assessments that he may owe in the Local Union of which he was last a member and should they refuse to pay the amount, their delegate will not be allowed to sit in Convention until it is paid.

Sec. 5. When a member leaves the employ of one firm and enters

the employ of another, though both firms may be under the jurisdiction of the same Local Union, he shall be required to procure a Local Clearance Card, and it shall be unlawful for any member or members to work with any one refusing to procure such card.

Sec. 6. All cards granted by any Local Union shall be signed by the President and Financial Secretary, and bear the seal of same.

Sec. 7. Any member retiring from this trade and making an application for a withdrawal card, it shall be granted by a majority vote of the Local Union, and any member accepting a position as manager or night foreman of a factory where he will not be working at the trade shall take out a withdrawal card. And should he at any time desire to deposit said card in any Local Union, the President thereof shall appoint a committee of three to investigate his conduct toward the Order and its members during the time he has held such card, and if the committee report favorably, the ballot shall be taken, and by a majority vote the applicant shall be admitted to membership, but if the committee report unfavorably then a ballot shall be taken, and unless two-thirds of the members present vote in favor of his admission, the President shall reject the card.

Sec. 8. No member of this trade having stock in any factory shall be granted a Withdrawal Card to go to work in said factory, but on application can be granted a Transfer Card, which must be deposited in the nearest Local Union, but if there is no Local Union in the vicinity no card shall be granted until a Local Union is organized for said factory. No working foreman, no working superintendent or working stockholder shall be exempt from paying dues or assessments, or to be entitled to a Withdrawal Card.

Sec. 9. Any person holding a Withdrawal Card desiring to again become a member of the organization must, upon the committee reporting favorable on his case, pay the sum of three (\$3.00) dollars as a reinstatement fee, and must be reinstated before going to work.

Sec. 10. Whenever a strange brother makes application to be admitted into a Local Union meeting the President of said Local Union shall appoint a committee of three, who shall wait upon him and examine his card, and if the committee find the card legal the brother shall be admitted without further action. If found illegal, the brother shall not be admitted.

Article XXIII.

Violations.

Section 1. Any member robbing or embezzling from a brother member, or leaving a brother member in debt with intent to defraud by not giving proper notice of his departure, or has been fraudulently receiving or misapplying funds of the Union, or the money of any member entrusted to him, or that he has slandered any brother member, or by acting contrary to the established rules

of this Union, on any question affecting the price of labor, or the system of work which has been adopted by the Union if opposed to the interests of his fellow workmen in keeping with the rules of this Union, shall upon conviction thereof, be punished by fine, by majority vote, or suspension or expulsion of a two-thirds vote of the members present.

Sec. 2. When any officer or member of the Union embezzles any of the funds of any Local Union, and accepts work in any non-union factory, the officers of said Local Union must proceed to prosecute said member by due process of law; provided, conviction is possible.

Sec. 3. Any member accepting work in a non-union house without first having written permission from the National Union, shall forfeit his membership in this Association, and shall not be entitled to receive any benefits.

Sec. 4. Members expelled for violating the Constitution, their names shall be sent to the trade, and they shall not be restored to membership unless by consent of a majority vote of the members after their names shall have been submitted by the Local Union that expelled them, and the names of persons, not members who are working below wages and violating our laws shall also be sent.

Sec. 5. Any member of the A. F. G. W. U. who joins the International Association of Machinists, forfeits his membership in our Union.

Article XIV.

Apprentices.

Section 1. If any apprentice quits or leaves his place, he shall not be allowed to work in any other shop. Should the firm discharge him, they shall not put on another apprentice until the expiration of his term of apprenticeship.

Sec. 2. No non-union man or boy shall be allowed to take a place to work at any of the trades represented in this A. F. G. W. U.

Sec. 3. Not no apprentice shall be taken into the Union until the expiration of their term of apprenticeship, unless for good and sufficient reasons.

Sec. 4. In case of any manufacturer retiring, suspending or otherwise stopping the operation of his business, the National President shall have the power to grant the apprentices of the firm suspending work, a card, provided apprentices have served two years or more at the trade, but in no case shall an apprentice of any mold shop be granted a card without the recommendation from the Local Union under which he started his apprenticeship. Cards so granted shall entitle the holder thereof to finish his unexpired time in any shop under the jurisdiction of the A. F. G. W. U. working as an apprentice, and being governed by the apprentice laws of the department, and in no case shall he displace a regular apprentice previously indentured, nor shall his position be classed as a journeyman. Apprentices holding provisional cards in this department shall pay their regular assessments but no dues. Should he desire to change his place of

40 employment before his term is finished, the shop committee shall render its decision according to the apprentice rules and report the same at the next meeting of the Local Union, when, by majority vote, the Local Union must grant permission to change his place of employment and give correct amount of time served.

Sec. 5. Should the firm resume work at any time before the regular expiration of their apprenticeship, the National President shall collect the cards of said apprentices and order them back to serve out their time with the firm with whom they commenced their apprenticeship. In case of failure on the part of any apprentice to obey the order of the National President, he shall not receive the usual protection granted apprentices by this Union.

Article XXV.

Amendments.

Section 1. No alteration or amendments shall be made to this Constitution, except at an annual convention of the A. F. G. W. U. Notice of the intended alterations of amendments must be sent in writing to the National Secretary by the First of May of the year of annual convention, and each Local Union sending proposed amendments shall state clearly what article and section they propose to amend and how the article or section will read in case their proposed amendments are adopted. And there shall not be any alterations or amendments acted upon which have not been sent to the Secretary by the first of May previous to the assembling of convention.

Sec. 2. No amendment of a purely trade character, and not having general application shall be made to this Constitution.

Article XXVI.

Time of Submitting of Changes to the Wage List and Grievances.

Section 1. All changes to the wage and move list, shall be sent to the National Office between January 1st and 31st of each year.

Sec. 2. All grievances to be in the National Office on or before the first day of June of each year.

NOTE.—These Laws become effective September 1st.

41 Some of the provisions of the constitution of the Local Unions of the American Flint Glass Workers' Union as revised and classified by the Committee appointed at the Thirty-fifth Session, 1912, held at Montreal, Canada.

Local Constitution.

Article I.

Number of Union.

Section 1. The Local Union shall be known as Local Union No. — of the American Flint Glass Workers' Union of North America.

Sec. 2. The object of this Order shall be the elevation of the position of its members, the maintenance of the best interests of the Order, and all things appertaining to the business in which all the members under its jurisdiction may be involved.

Article II.

Qualifications for Membership.

Section 1. Any workman in this vicinity who is connected with the trade represented in the National Union whether he is a blower, presser, finisher, foot finisher, mould blower, prescription blower, gatherer, mould maker, cutter, engraver, or lamp worker, and not under the age of eighteen years, may become a member of this Union, providing said workman be a person of sober and industrious habits.

Sec. 2. And that no person raising to the position of gatherer shall be initiated as a member of the A. F. G. W. U. unless he is eighteen years of age, and has gathered one year.

Sec. 3. No person shall be advanced until he has gathered three years, or gathered one year and set feet eighteen months to date from the time he joined the Union; and should such person draw a card, the date of his initiation will be named on it. And every person being initiated shall receive a certificate, which said member must produce to the Local before he can be advanced to any higher position. The National Office shall keep uniform initiation certificates, and each member must procure one from the Financial Secretary of Local where initiated.

Sec. 4. Candidate for membership shall be proposed in writing by a member in good standing when the President shall, 42 without motion, appoint a committee of three members, other than the recommenders, to whom shall be referred the proposition and they shall report at next regular meeting. Upon the report of said committee, unless consideration be postponed to a certain day, or recommended for further examination, the President shall, after giving the member a chance to speak thereon, at once, and without motion, direct the applicant to be balloted for, and it shall take two-thirds of the members present to elect him.

Article III.

Officers.

Section 1. The elective officers of the Union shall consist of a President, Vice-President, Recording Secretary, Financial Secretary, Corresponding Secretary, Treasurer, Inspector, Inside Guard, Outside Guard and three Trustees.

Article IV.

Sec. 10. The Outside Guard shall have charge of the outside door, and he shall not allow any unnecessary number to congregate in the ante-room at any time, and perform such duties as the law, rules and regulations of the Union demand.

Article V.

Sec. 2. The election of officers shall be as the Union may direct and shall take place annually at the last meeting in September.

Article VII.

Meetings.

Section 1. State-meetings shall be held at least once every month.

Sec. 2. Special meetings may be called by the President, or on application of the Factory Committee, or at the written request of seven members of the Local Union in good standing.

Sec. 3. Each Local Union shall determine upon the number of members which shall be necessary to constitute a quorum for the transaction of business of any of the meetings of their respective Unions.

Article VIII.

Section 1. No Local Union shall go on a strike unless complying with the provisions of National Constitution.

Article IX.

Penalties.

Section 3. The chairman of any committee failing to report at the required time, unless further time be granted, shall be fined two dollars, and said fine must be paid before he be allowed to work. Such fine may be remitted when a satisfactory explanation is given and his money returned to him.

Sec. 4. Any member violating his obligation, Constitution or By-Laws of this Union, shall be liable to a fine of not less than two dollars, or reprimanded by majority vote of members present, suspension, or expulsion, by a two-thirds vote of the members present.

Sec. 5. All fines thus imposed, if not paid at the time, shall be charged by the Financial Secretary to the person from whom due, and shall stand against such person as regular dues and must be liquidated to entitle him to any privileges or benefits of the Union. It shall require a two-thirds vote of the members present to remit such fine.

Article X.

Committees.

Section 1. The Factory Committee shall be appointed by the President, and shall consist of two or more members (as the Local Union may designate) in good standing, one or more of whom shall be a delegate or delegates of the previous Convention, and said members shall serve for a period of at least six months, whose duty it shall be to see that the members conduct themselves in a proper manner towards each other in the factory. They shall also see that the members comply with the rules and regulations of the Union. They shall receive all reports which may be made to them by members in relation to any one not receiving the price for the ware he may be making, or making over the move that has been established by this Union; report all dereliction from duty on the part of
44 the members which may come under their notice, and such other duties as the Union may require.

Sec. 4. It shall be the duty of all members to render the officers and committees of the Union proper aid and influence in the prosecution of their several duties.

Sec. 5. When any member or members are properly appointed on a committee, according to Article 5, section 1, of Local Constitution, they shall not have the privilege of declining, unless serving on one other special committee.

Sec. 6. Any member properly appointed on a committee, who fails to attend any meeting of the committee, shall be liable to a fine.

Sec. 7. It shall be the duty of the shop committee of the Mould Making Department to act in conjunction with the factory committee, notify them of all new moulds and of the intention of the company to cut moulds down, and give any information that will be beneficial to our members.

Article XI.

Dues, Fines, etc.

Section 1. Each member of the Union shall pay into the treasury thereof such sums, as monthly dues, in advance, as specified in the By-Laws, together with fines and other moneys, and the Financial Secretary shall make up a report on the first stated meeting of the Local in January, April, July and October, of all members who have not complied with this section of this article, and any member omitting to pay the same for three months, and should be neglect to pay

the same within a month, the Secretary shall report the same to the Union, whereupon the President shall, unless otherwise directed by the Union, declare such members suspended. Suspended members shall not be allowed to work until restored to membership, nor allowed to vote in the Local Union or sit therein during the discussion of his own case, without the consent of the majority of the members.

Sec. 2. A member suspended for non-payment of dues shall not be restored to membership unless he apply in writing to be restored, which application shall be referred to a committee of three, whose duty it shall be to investigate his character and fitness for membership and shall produce the evidence in writing, with their
 45 opinion, at the next regular meeting of the Union; whereupon a ballot may be had, and if a majority of the members present sustain the committee, it shall be received as the judgment of the Union; and any member thus reinstated, shall pay such sums as the by-laws shall prescribe. Any person who has been suspended, expelled or withdrawn, must renew his obligation when reinstated, and delinquent members shall not be permitted to vote on their own case.

Sec. 3. Any member having his card in his possession and being out of employment at the glass trade for three consecutive months, shall be exempt from dues from that time until his card is deposited into a Local Union.

Sec. 4. Local Unions shall have power to reinstate their suspended members by the applicant paying such sums as a reinstatement fee as a majority of the Union may determine.

Article XII.

Constitution—How Altered.

Section 1. This Constitution shall not be altered or amended, except at a stated meeting of the National Union; a majority of the members present consenting thereto.

Sec. 2. This Union shall not be dissolved as long as there are seven members in good standing who may be willing to continue it.

Sec. 3. Should any doubt hereafter arise respecting the true intent and meaning of any Article or Section of this Constitution, the case shall be referred to the President and officers of the A. F. G. W. U.

Article XIV.

Duties of Members.

Section 1. Any member who uses his influence to disorganize his fellow-workmen, thereby making it difficult for them to carry out the object of this Union, shall be fined twenty-five dollars.

Sec. 2. Any member known to go to his work drunk, or shall

in any manner detrimental to the interests of this Union, or that will bring reproach upon the Order, or its members, shall be fined, reprimanded, suspended or expelled from this Union, and should said member be discharged the members will not uphold him.

6 Sec. 3. The members of this Union shall as much as is in their power, endeavor to establish and make permanent the same, and use all honorable exertions to secure employment for any member of this Union in preference to all others. They shall also give a helping hand to one another in the factory as much as it may be in their power to do.

Sec. 4. The members of this Union shall not injure each other in their employment, such as undermining or conniving at members' jobs, by seeking to or taking the place of a member who may be suspended from his job, "until such suspended member declares that he does not wish to return to that job or shop again" (as it is understood that said suspended member should have the preference of any other to such job if he wishes to return to it), and any member taking a job in such manner, shall be fined \$10.00, which fine shall be paid to the Local within two weeks.

Sec. 5. Local Unions shall keep a record of all cases where managers taken from our ranks *who* introduce antagonistic questions against our organization, such evidence to be held and given to any Local in which such manager may present his card for admission.

Article XV.

Adoption of By-Laws.

Section 1. This Union shall have full power to adopt such By-Laws or Rules as may be deemed necessary, provided they are not in conflict with this constitution or the Constitution of the National Union.

Sec. 2. Local Unions shall have the power, if they deem it for their best interests, to establish protective measures to govern their sick and death benefit law by fixing a reasonable period of time, not to exceed sixty days, that a member must be a member of said Local Union in order to be entitled to sick and death benefits.

Sec. 3. Each Local Union shall send or cause to be sent to the National President, a copy of their By-Laws.

Sec. 4. The National President shall examine all By-Laws, and should he find any article or section or word of them conflicting with the National or Local Constitution, he shall mark and return them to the Local Union with a letter of explanation.

47 Sec. 5. Should he approve them and declare them constitutional, they shall be considered good law, and all members shall be subject to the By-Laws of the Local Union under whose jurisdiction they are working.

Your orator further says that it has now outstanding a bond issue amounting to one hundred thousand dollars, and that the payment of the said bonds is secured by a mortgage or deed of trust upon

your orator's plant aforesaid which is located at Wellsburg, West Virginia, as aforesaid. Said mortgage deed of trust secured no other debt than said one hundred thousand dollar bond issue, and while it conveys the property of your orator as aforesaid in Wellsburg it also conveys certain interests of H. W. Paull, James Paull, and S. O. Paull, the president, treasurer, and secretary of your orator in certain real estate in which they have interests in Wheeling, West Virginia. Their interests in said real estate were put in under the mortgage for the purpose of increasing the security at the date when the mortgage was given. Said bonds are payable in series of six bonds of one thousand dollars each every year beginning with July 1, 1915. The interest is payable every six months, that is, on January first and July first in each year. All of the bonds are to be paid by July 1, 1930. Your orator says that it has no means of paying the bonds aforesaid and keeping its property and plant intact and in operation except by your orator running its factory, engaging in business and earning the amount of the bonds from the profit of your orator's business from month to month and from year to year. If let alone your orator expects to promptly and fully pay off all of said bond debt. If your orator is compelled to shut down or to abandon its glass business, or if your orator is compelled to unionize and be handicapped by the Union and your orator's cost of production so increased as to practically eliminate your orator's profits, your orator can never pay off its said bond issue.

In this connection your orator says that it has been arranging for and is now enlarging its factory by constructing another brick building of considerable size and value, which addition it expects to complete and have in use within the next three or four months.

Your orator says that the defendant, Thomas W. Rowe, is president of the American Flint Glass Workers' Union; that the defend-

48 ant, William J. Croke, is vice-president of the American Flint Glass Workers' Union; that the defendant, William P. Clarke, is secretary-treasurer of the American Flint Glass

Workers' Union; that the defendant, D. J. McGrail, is assistant secretary of the American Flint Glass Workers' Union; that the defendant, Joseph Gillooly, is a member of the executive board of the American Flint Glass Workers' Union and is also one of the four organizers of the American Flint Glass Workers' Union; and that each and all of said defendants, Thomas W. Rowe, William J. Croke, William P. Clarke, D. J. McGrail and Joseph Gillooly have agreed, confederated, combined and formed themselves into a conspiracy, under the name of the American Flint Glass Workers' Union, to unlawfully persuade, entice, and procure your orator's glass workers, employed by your orator and working for your orator in or around your orator's glass works, to break, violate and disregard their several contracts with your orator, all with the avowed purpose of compelling your orator to unionize its plant, without your orator's consent, and to such end have unlawfully and maliciously agreed, confederated, combined and formed themselves into a conspiracy to compel, by threats and intimidation, and by other unlawful means, your orator's said employees to join the union and to apply

to their own relation with your orator, in the matter of their employment, the rule of the union, and to enable said union to apply its rules and regulations to your orator under penalty of closing down your orator's glass factory, provided your orator still refuses to unionize its factory and recognize the union; and your orator further says that each and all of the said defendants have agreed, confederated, combined and formed themselves into a conspiracy under the name of the American Flint Glass Workers' Union with certain manufacturers who are competitors of your orator and who belong to the Associated Manufacturers, who, by agreement with the American Flint Glass Workers' Union, established the wage and move list and rules and regulations to govern the operation of union plants as hereinbefore alleged and as set forth in this bill and Exhibit No. 3 and in Exhibit No. 4 respectively to the bill, whereby by unlawfully persuading, enticing and procuring your orator's glass workers employed by your orator and working for your orator to break, violate and disregard their several contracts with your orator, said defendants will compel your orator to run its factory union and to become subject to such wages and rules governing the employment of

49 members of the American Flint Glass Worker's Union as shall have been agreed to, not by your orator, but by your orator's competitors who are members of said Associated Manufacturers and who have made and who make with said American Flint Glass Workers' Union the wage and move list and rules and regulations which would govern your orator's employment in its business and its union labor were it unionized; and your orator further says that each and all of the said defendants have agreed, confederated, combined and formed themselves into a conspiracy under the name of the American Flint Glass Workers' Union with certain manufacturers, competitors of your orator, members of said Associated Manufacturers, to unlawfully persuade, entice and procure your orator's glass workers employed by your orator and working for your orator in or around your orator's glass works, to break, violate and disregard their several contracts with your orator, all with the avowed purpose of compelling your orator to unionize its glass factory without your orator's consent, to the end that an end may be put to the complaints made by said manufacturers, competitors of your orator, members of said Associated Manufacturers, concerning the low selling price of goods quoted by your orator in the markets of said trade in the United States.

Your orator says that it has no contractual relations whatever with any of the defendants hereto, and that each of said defendants is fully aware that your orator is operating a non-union factory, and will not consent to operate a union factory; that its employes are non-union; that said employes are required by your orator at the time of entering service to agree not to become connected with the union while employed by your orator, and that if they do join the union their employment with your orator shall cease; that with such understanding your orator's employes enter into its employment and that they are now working for your orator under such contract, and with such conditions, all of which is known to the defendants, and to

each of them, as aforesaid, and that each of your orator's glass workers is required to agree to and sign as a condition of his employment the employment card, a copy of which is filed as Exhibit No. 2 to the bill, all of which also is known to these defendants, and to each of them, as aforesaid.

In support of your orator's allegation that the said defendant,

50 Thomas Gillooly is a member of the executive board, your orator files a copy of "The American Flint," volume 3, No. 6, April, 1912, as Exhibit No. 8 to this bill, and which is prayed to be taken and read as part hereof, whereby, from what is contained on pages 21 and 22 of said number of The American Flint, it appears that said Joseph Gillooly is chairman of the board in the press department of the executive board, and that his address is Joseph Gillooly, Box 502, Bridgeport, Ohio; and in support of your orator's allegations that said Joseph Gillooly is one of the organizers of the American Flint Glass Worker's Union, your orator refers to a copy of The American Flint which is filed as Exhibit No. 5 to the bill, where, upon page 3 of said official magazine, the picture of said Joseph Gillooly appears, and he is designated as one of four organizers of the American Flint Glass Workers' Union, who by their works recently successfully brought to a conclusion the conflict between the union and the United States Glass Company, whereby that glass company has been compelled to recognize the union and to operate its factories union.

Your orator further says that the said Thomas W. Rowe, William J. Croke, William P. Clarke, D. J. McGrail and Joseph Gillooly, individually, and as officers, agents, employes and servants as aforesaid of said American Flint Glass Workers' Union, are fully aware that your orator's said employes are satisfied with their employment; that your orator is engaged in manufacturing glassware and in fulfilling contracts for its various manufacturing products; that it would be impossible to fulfill these contracts without the labor of its said employes, and that it would entail upon your orator great financial loss to have its ability to fulfill its contracts interfered with by the failure of its men to work longer for your orator, and likewise would entail great loss and damage to your orator to have its glass factories shut down, and to have a strike declared, yet your orator says that the said defendants have unlawfully and maliciously agreed together, confederated, combined and formed themselves into a conspiracy, the purpose of which they are proceeding to carry out and are now about to finally accomplish, namely, to cause your orator's glass factory to be shut down, its plant to remain idle, its contracts to be broken and unfulfilled until such time as your orator shall submit to the demand of the union, that it shall unionize its plant, and having submitted to such demand, unionize its plant by employing only union men who shall become subject to
51 the orders of the union, paramount to the orders of your orator, their employer, and thus in unionizing its plant your orator shall surrender its control and management of its business to the union, or the various rules and regulations laid down by the union, and accede in advance to every demand the said union by its

said officers, agents, employes and servants may make, and until in thus unionizing its plant, your orator shall have, as the employer of the union men, become subject to the wage and move list and rules and regulations agreed upon by the Associated Manufacturers with the American Flint Glass Workers' Union as aforesaid, and until by unionizing its plant it shall have been compelled to and shall in effect cease to sell its said manufactured goods at the low selling price referred to hereinbefore as having been made by certain manufacturers, competitors of your orator, by the said defendant, Thomas W. Rowe, president of the American Flint Glass Workers' Union, as aforesaid.

Your orator says the effectuating of this purpose is imminent and the damage threatened is great and irremediable, and that your orator's loss so far has been in excess of three thousand dollars, exclusive of interest and cost, while upon the accomplishment of said purpose of said defendants and the shut down of your orator's glass factory, the damage to your orator would be still greater and incapable of definite ascertaining, being incalculable, but would amount to many thousands of dollars, far in excess of the sum of three thousand dollars, exclusive of interest and cost.

Your orator says that it pays as much as the union price to its said employes for the work performed by them, and that the defendants in thus unlawfully and maliciously agreeing together, confederating, combining and conspiring to effect by unlawful means the unionizing of your orator's glass factory, are seeking power for the purpose of strengthening the union in future contests with employers of labor, to compel all glass workers to join the union, establish a monopoly and force employers of that kind of labor, and especially to force your orator, to yield to the union's demands or else to give up its business, and are also seeking to carry out their said unlawful combination and conspiracy with certain manufacturers, competitors of your orator, members of said Associated Manufacturers, to compel your orator to employ union labor and by reason of employing union labor to become subject to the wage and

52 move list and rules and regulations governing the employment of union men by glass manufacturers as have been and are from time to time fixed by joint conferences between the Associated Manufacturers, and association with which your orator is not connected, and said American Flint Glass Workers' Union, and especially to force your orator to quit selling your orator's said manufactured goods at the low prices objected to by your orator's competitors as mentioned by the said defendant, Thomas W. Rowe, in his letter to your orator dated June 10, 1913, as aforesaid.

Your orator says that the union is not a competitor of your orator in the labor market; that the union does not employ labor and is not an employer of labor.

Your orator says that in refusing to recognize the union, and in likewise heretofore and in now running its glass factory non-union, your orator did not seek to reduce the wages of its said employes in order to cause said employes to work for less money than they might make for similar work at any other factory, nor does your orator now

seek nor contemplate any reduction in the wages of its present employees.

Your orator's sole purpose *is* running non-union and in now insisting upon its right to do so in the matter, by and without interruption from said defendants acting, individually and as representatives of the said American Flint Glass Workers' Union was and is to escape from the intolerable oppression and vicious intermeddling of the said defendants.

Your orator says that these same defendants have for some years last past been in the business such as it is hereby shown they are now engaged in; that they are well acquainted one with the other, and that they constitute a part of certain upper officials of the American Flint Glass Workers' Union, in whose hands the management of the affairs of said union has been centralized.

Your orator says that while your orator has declined to meet with the said defendant, Rowe, president of the American Flint Glass Workers' Union, for the purpose of arranging for the unionizing of plaintiff's glass factory, yet these defendants, one or more of them, failing in that effort made by the said defendant, Rowe, president as aforesaid, have continued to try to bring about said unionizing by inducement, persuasion, threats and intimidation, and by various means and devices to induce your orator's employees to cease
53 work for your orator, and by use of like means, devices, intimidation, threats, persuasions, and inducements to prevent men willing to work for your orator not to engage to work, or if having engaged to work then not to go to work for your orator; but despite their efforts your orator has been able, although with a depleted force caused by the acts of one or more of them in sending away employees of your orator to union plants elsewhere away from Wellsburg, West Virginia, to conduct its business peacefully and lawfully to the present time.

Your orator says that its employees are non-union men who have entered into employment with your orator with the understanding that your orator shall continue to run a non-union factory; that some of your orator's employees were employed under such condition and with such understanding and have bought property and homes and expect to have permanent employment with your orator so running its factory non-union and with the understanding and expectation on their part that while in the employ of your orator they shall be protected in such employment.

Your orator says that the said defendants with full knowledge of the obligations of your orator's employees to your orator and likewise with full knowledge of your orator's obligations to your orator's employees as herein set forth arising out of the signing of the bilateral contract as indicated in the said employment card, a copy of which is filed as Exhibit No. 2 to the bill, have been, since they obtained such knowledge of such contractual relations, and now are, endeavoring to bring about breaches of said contracts by your orator's said employees who have signed said employment cards and to induce said employees who have so signed such cards, to join the union, conceal such joining from your orator, and as soon as a sufficient number of

your orator's said employes shall have joined the union, then to strike and shut down your orator's glass factory, unless your orator will consent to unionize, and if shut down then to keep your orator's glass factory shut down until your orator shall unionize its glass factory; and your orator further says that the said defendants in proceeding to carry out their several conspiracies as hereinbefore alleged, are now endeavoring to unionize your orator's factory, and have threatened, and your orator has reasonable ground to fear that they will, and so alleges, to close down your orator's said factory and keep it closed until your orator will agree to sign the union scale and employ none but union labor.

54 Your orator says that as a result of the labors of the said defendant, Joseph Gillooly, a number of your orator's men have been induced to join the union and having been given union cards have been procured positions by the American Flint Glass Workers' Union, and have gone to work in union factories away from Wellsburg; that while said union has been unable to bring about a shut down of your orator's glass factory to this date, still the said Joseph Gillooly recently stated to one of your orator's employes who is now working for your orator that he was getting along "fine" in his effort to unionize the Eagle, that he was going home on Sunday, July 2d, to spend the Fourth, and then that he was going to attend the convention of the American Flint Glass Workers' Union for two weeks, and that after that was over he was coming back to Wellsburg, he said, two weeks from Monday, July 7th, 1913, and that when he came back he was going to be ready then to use his fire crackers, and upon being asked what kind said "dynamite—the kind that makes a loud noise."

Your orator says that the said American Flint Glass Workers' Union, a voluntary association as aforesaid, is under its constitution violating the common and statutory law of the state of West Virginia as well as the constitution of said state.

Your orator says that the said Thomas W. Rowe, William J. Croke, William P. Clarke, D. J. McGrail and Joseph Gillooly, acting in their several official capacities hereinbefore stated, are representatives of the said American Flint Glass Workers' Union; that the principal office of said American Flint Glass Workers' Union is at Toledo, Ohio; that the jurisdiction of this court is invoked on the ground that your orator is a resident of the northern district of West Virginia and a citizen of said state, and that each of the said defendants is a resident of a different state, to-wit: no defendant is a resident of the state of West Virginia, and that the matter in dispute exceeds, exclusive of interest and costs, the sum of three thousand dollars.

Your orator says that while the membership of the said American Flint Glass Workers' Union is large as hereinbefore stated, yet the names and addresses of the said members of the several locals in the several states are to your orator unknown; that if any of them should happen to be residents of the state of West Virginia they are not necessary parties hereto, are not interfering with your
 55 orator in the matters herein complained of, and that they can not be joined without ousting the jurisdiction of this

court as to the other parties, the said defendants hereto, of who actings and doings, purposed and proposed acts and doings, your orator herein complains as hereinbefore set forth.

Your orator further says that unless enjoined by this court, said defendants acting individually and agreeing, confederating, combining and forming themselves into a conspiracy under the name of the American Flint Glass Workers' Union as aforesaid, will, in pursuance of their said unlawful purposes and designs, by enticement, persuasion or coercion, in one form or the other, bring about the shutting down of your orator's glass factory and the ultimate destruction of its business, and will without the consent and against the will of your orator compel your orator to recognize said defendants and said union in the further transaction of its legitimate business in manufacturing and shipping its glass ware and manufactured products, and will compel your orator to contract with its employees through the said defendants as officers of the said American Flint Glass Workers' Union under such rules and regulations made and enforced by said American Flint Glass Workers' Union as by said defendant officers as will enable the union to dictate the persons whom your orator shall employ and those whom your orator shall discharge, the wages your orator shall pay, and will compel your orator to agree that each of its future employees as members of the said American Flint Glass Workers' Union shall owe and yield to said union an allegiance which shall in all things be paramount to that which said employees would owe to your orator, and that they will thus take charge of, dictate the management of, and virtually control, your orator's business, and thereby perpetrate acts of oppression and wrong upon your orator which distinctly violate your orator's contractual, common law, statutory and constitutional rights as a citizen of the state of West Virginia, and especially in view of the combination and conspiracy hereinbefore alleged to have been entered into and to exist between said American Flint Glass Workers' Union and certain manufacturers members of said Associated Manufacturers dealing with said American Flint Glass Workers' Union, bring about the subjection of your orator's business to agreement entered into between said Associated Manufacturers and said American Flint Glass Workers' Union whereby the cost of producing said gas and electric lighting glass ware shall be increased as to compel your orator either to cease the manufacture of that commodity or to cease selling its said gas and electric lighting glass at prices lower than your orator's competitors who are running their union sell the same, to that trade within the United States.

Your orator further says that in effecting their said object of unionizing your orator's said glass factory, the said defendant-purposes and threaten to, and your orator being so informed and believing it to be true, alleges on such information and belief that said defendants will and are about to indulge in all of the many methods of accomplishing their result by the use of threats, intimidation, force, violent or abusive language, picketing your orator's premises, picketing or patroling or guarding the streets and approaches to your orator's premises, and going to the homes and boarding houses

your orator's employes for the purpose of intimidating or coercing them to leave your orator's employment and to picket railroad and street cars passing to and from or through or near your orator's premises for the purpose of intercepting your orator's employes in going to or from your orator's premises and for the purpose of intercepting and preventing persons coming to your orator's premises for the purpose of seeking or for the purpose of entering into your orator's employment.

To the end, therefore, that your orator may have that relief which it can only obtain in a court of equity, and that the said defendants may each answer the premises, but not upon oath or affirmation, an answer under oath being hereby expressly waived by your orator, your orator now prays the court that the said Thomas W. Rowe, the said William J. Croke, the said William P. Clarke, the said D. J. McGrail, and the said Joseph Gillooly, each individually and as president, vice-president, secretary treasurer, assistant secretary, member of the executive board, and organizer, respectively, of the said American Flint Glass Workers' Union, and each and every of them, their committees, agents, servants, confederates and associates, be restrained and strictly enjoined from interfering and from combining, conspiring or attempting to interfere with employes of your orator for the purpose of unionizing your orator's glass factory, without your orator's consent, by representing or causing to be represented in

57 express or implied terms, to any of your orator's employes, or to any person who might become an employe of your orator, that such person will suffer or is likely to suffer some loss or trouble in continuing in or entering the employment of your orator, assigning, representing, or causing to be represented in express or implied terms to such employe or employes that such loss or trouble will or may come by reason of your orator not recognizing the American Flint Glass Workers' Union, or because your orator runs a non-union glass factory; that the said defendants, and each and every of them, their committees, agents, servants, confederates and associates, be restrained and strictly enjoined from interfering and from combining, conspiring or attempting to interfere with employes of your orator for the purpose of unionizing your orator's glass factory, without orator's consent, and in aid of such purpose knowingly and wilfully bringing about in any manner the breaking by your orator's employes of contracts of service known to them at the time to exist, which your orator now has with its employes, and from knowingly and wilfully bringing about in any manner the breaking by your orator's employes of contracts of service which may hereafter be entered into by persons with your orator and be known to them while the relationship of employer and employe, as to such employe so brought to break his contract, exists, and especially from knowingly and wilfully enticing your orator's employes, present or future, knowing of such relationship, while the relationship of employer and employe, as to such employe so enticed, exists, to leave your orator's service, giving or assigning directly or indirectly as a reason for any such act so brought about, or enticement and leaving of your orator's service, that your orator does not

recognize the American Flint Glass Workers' Union, or that your orator runs a non-union glass factory, or that the interest of the American Flint Glass Workers' Union requires that your orator shall not be permitted to run a non-union glass factory, or that the interest of the union will be best promoted thereby; that the said defendants, and each and every of them, their committees, agents, servants, confederates and associates, be restrained and strictly enjoined from interfering and from combining, conspiring or attempting to interfere with the employes of your orator so as knowingly and wilfully to bring about in any manner the breaking by your

orator's employes of contracts of service, known to them at the time to exist, which your orator now has with its employes, and from knowingly and wilfully bringing about in any manner the breaking by your orator's employes of contracts of service which may hereafter be entered into by persons with your orator, and be known to them, while the relationship of employer and employe, as to such employe so brought to break his contract, exists, and especially from knowingly and wilfully enticing your orator's employes, present or future, knowing of such relationship, while the relationship of employer and employe, as to such employe so enticed, exists, to leave your orator's service, without your orator's consent, against your orator's will, and to your orator's injury; that the said defendants, and each and every of them, their committees, agents, servants, confederates and associates may be by this court ordered and commanded to desist and refrain from in any manner interfering with, hindering or obstructing any of the business of your orator or its agents, servants or employes, in the discharge of their duties as such, at and about your orator's glass factory or elsewhere by trespassing on or entering upon the ground and premises of your orator, or within its glass factory, for the purpose of interfering therewith, or hindering or obstructing its business in any manner whatsoever, or with the purpose of compelling or inducing, by threats, force, intimidation, violence, violent or abusive language, or persuasion, any of the employes of your orator to refuse or fail to perform their duties as such employes; also from compelling or inducing or attempting to compel or induce, by threats, intimidation, force, or violence, or abusive or violent language, any of the employes of your orator to leave its service or fail or refuse to perform their duties as such employes, or to compel or attempt to compel, by threats, intimidation, force, violent or abusive language, any person desiring to seek employment in or about your orator's glass factory and works from so accepting employment therein; also from entering or establishing a picket or pickets or men on or patrolling railroad or street cars passing through, near or adjacent to your orator's property for the purpose of inducing or compelling by threats, intimidation, violence, violent or abusive language, or persuasion, any employe of your orator to fail or refuse to perform his duties as such or for the purpose of interviewing or talking to any person or persons on said railroad or street cars coming to or near your orator's glass factory to accept employment with your orator for the purpose and with the intention of inducing or com-

compelling them, by threats, violence, intimidation, violent or abusive language, persuasion or in any other manner whatsoever, to refuse or fail to accept service with your orator; also from compelling or inducing or attempting to compel or induce by threats, force, intimidation, or violent or abusive language, any employe of your orator, to refuse or fail to perform his duties as such employe, and from compelling or attempting to compel or induce, by threats, intimidation, force, or violence, or abusive or violent language, any such employe to leave the service of your orator, and by like method to prevent or attempt to prevent any person desiring to accept employment with your orator in or about its glass factory or work or elsewhere, from doing so by threats, violence, force, intimidation, or violent or abusive language; also from interfering in any manner whatsoever, either by threats, violence, intimidation, persuasion or entreaty with any person in the employ of your orator who has contracted with and is in the actual service of your orator to entice or induce him to quit the service of your orator or to fail or refuse to perform his duties under his contract of employment, and from ordering, aiding, directing, assisting, or abetting in any manner whatsoever any person or persons to commit any or either of the acts aforesaid; that the said defendants, and each and every of them, their committees, agents, servants, confederates and associates, may be by this court forbidden and restrained from congregating at or near the premises of your orator and from picketing or patrol-ing said premises for the purpose of intimidating your orator's employes or coercing them by threats, intimidation, violence, abusive or violent language, or preventing them, in the manner aforesaid, from rendering their services to your orator, and, in like manner, from inducing or coercing them to leave the employment of your orator, and from in any manner so interfering with your orator in carrying on its business in its usual and ordinary way and from interfering by threats, intimidation, violence, violent or abusive language, any person or persons who may be employed or seeking employment by your orator in the operation of your orator's glass factory and works; and that the said defendant, and each and every of them, their committees, agents, servants, confederates

and associates, may be by this court restrained and forbidden,
 60 either singly or in combination with others, from collecting in and about the approaches to your orator's glass factory and works, for the purpose of picketing or patrol-ing or guarding the streets and approaches to the property of your orator for the purpose of intimidating, threatening or coercing any of the employes of your orator from working in its glass factory or works, or any persons seeking employment therein from entering into such employment, and from so interfering with said employes in going to and from their daily work in and about the glass factory and works of your orator; and that said defendants, and each and every of them, their committees, agents, servants, confederates and associates may be by this court enjoined and restrained from going, either singly or collectively, to the homes or boarding houses of your orator's employes, or any of them, for the purpose of intimidating or coercing any or all of them to leave the employment of your orator;

and that your orator may have such further or other relief in the premises as the nature and the circumstances of its case may require.

May it please your honor to grant to your orator a writ of subpoena to be directed to the said Thomas W. Rowe, of Toledo, Ohio, and a citizen of the state of Ohio, individually, and as president of the American Flint Glass Workers' Union; William J. Croke, of Toledo, Ohio, and a citizen of the state of Ohio, individually, and as vice-president of the American Flint Glass Workers' Union; William P. Clarke, of Toledo, Ohio, and a citizen of the state of Ohio, individually, and as secretary-treasurer of the American Flint Glass Workers' Union; D. J. McGrail, of Toledo, Ohio, and a citizen of the state of Ohio, individually, and as assistant secretary of the American Flint Glass Workers' Union, and Joseph Gillooly, of Bridgeport, Ohio, and a citizen of the state of Ohio, individually, and as a member of the executive board of the American Flint Glass Workers' Union and as an organizer of the American Flint Glass Workers' Union, thereby commending them and each of them, individually, and in their respective official capacities at a certain time and under a certain penalty therein to be limited, personally to appear before this honorable court and then and there full, true, direct and perfect answer make to all and singular the premises, and to stand, perform and abide by such order, direction and decree as may be made against them, and each of them, individually,

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and in their said official capacities, in the premises as shall seem meet and agreeable to equity.

And your orator will ever pray.

[CORPORATE SEAL.]

EAGLE GLASS AND MANUFACTURING
COMPANY,

By H. W. PAULL, *its President.*

GEORGE R. E. GILCHRIST,

JOHN C. PALMER, JR.,

Plaintiff's Counsel.

GEORGE R. E. GILCHRIST,

Of Counsel.

STATE OF WEST VIRGINIA,

County of Ohio, ss:

Personally appeared before the undersigned, a notary public within and for Ohio county, West Virginia, H. W. Paull, who, being first duly sworn, says that he is president of the Eagle Glass and Manufacturing Company, the plaintiff corporation; that he has read the foregoing bill of complaint and knows the contents thereof; that as to such matters and things therein as are alleged on information and belief, affiant believes them to be true, and other matters and things therein stated are true in substance and in fact.

H. W. PAULL.

Sworn to before me and subscribed in my presence this 9th day
July, A. D. 1913.

[NOTARIAL SEAL.]

HERMAN A. HUNDT,
Notary Public of, in and for Ohio
County, West Virginia.

My commission expires Dec. 3d, 1919.

Statement of Employees Attached to Bill.

We, the undersigned, are employed by the Eagle Glass and Manufacturing Company. We are satisfied with our employment, with our wages, and with our work, and would like to remain in the company's employ.

WILLIAM J. BELL.
HOMER H. SCOTT.
ROSS MARSH.
J. W. FAULL.
EMMETT CARMICHAEL.
STEVEN ROTHEART.
JAMES MARSH.
CHARLES NEVILLE.
C. T. MILLER.
L. E. YEAGER.
R. POITEE.
DAVID C. MacWHINNIE.
F. W. BOULTON.
J. C. HENRY.
JOHN O. DITTY.
EDWARD CANNEY.
ALEX. BERGHOFF.

EXHIBIT No. 1 WITH BILL.

(Filed July 28, 1913.)

In the Circuit Court of Brooke County, West Virginia.

THE BILL OF COMPLAINT OF THE EAGLE GLASS & MFG. CO

vs.

THOMAS MOONEY, WILLIAM BILLINGSLEY et al.

To the Hon. Judge of said Circuit Court:

The plaintiff, the Eagle Glass & Mfg. Company, complains and says that it is a corporation and joint stock company, existing, organized and doing business under and by virtue of the laws of the state of West Virginia, mainly in the manufacture and sale of glass-ware at Lazearville, in Brooke county, in the state of West Virginia, immediately north of the town, or city of Wellsburg in said county. Said Lazearville is a settlement not incorporated into a city, town or village, but with a population of about

seven or eight hundred, living and doing business in buildings built as near together as an ordinary town, and with streets and roads running through the lots upon which said buildings stand, in like manner as an ordinary town; which settlement is generally known and called by the said name of Lazearville. It is a station on the Pittsburgh, Wheeling and Kentucky Railroad Company's line running north from the city of Wheeling, in this state, and is also a postoffice of the United States of America.

On the 19th day of June, 1900, the plaintiff was employing in its glass works, factory and warehouses at Lazearville two hundred and seventy-five hands, and was running twenty shops there. Shortly before that date all the glass workers among the plaintiff's employes had joined the labor union called "The American Flint Glass Workers' Union," and had become members of the local lodge thereof, meeting in the Knights of Pythias Hall in Wellsburg, West Virginia, of which local lodge the said defendant, Thomas Mooney, was and is secretary. Shortly before the last mentioned date, the said employes had made certain demands upon the plaintiff, among which was that the plaintiff company should adopt the labor union scale, wages and rules in its factory and in the operation thereof, and said demands being refused by the plaintiff, upon said date, all the plaintiff's employes, who were glass workers, at once and together and in pursuance of an understanding and agreement among themselves, left your orator's employment, and refused any further to operate its works and factory unless your orator should comply with and accede to the demands which had been made upon your orator by the said employes. Your orator having thus refused to place itself within the power or under the control of such organization, or union, as it conceived that it would have done had it complied with the demands which were made upon it as aforesaid, all of the plaintiff's employes who were glass workers on said date quit work and inaugurated a strike, by reason whereof plaintiff's works and factory were compelled to cease operations, and remained idle from said date for ninety days, until September 19, 1900.

Your orator charges on the facts herein stated that on or shortly before the said 19th day of September, 1900, the said defendants, together with the other defendants herein whose names are
64 unknown to your orator, conspired and confederated themselves together, to obstruct and interfere with the operation of your orator's factory, works and business, and to stop and ruin the same, in order to compel and until they should compel your orator to yield to the demands aforesaid of such striking employes, and from that time until the present, to carry out the said conspiracy, they have persistently and continuously every day been committing and inflicting upon your orator the wrongs, injuries and outrages hereinafter set forth, and will continue so to do, unless prevented and restrained by this honorable court.

A few days prior to September 19, 1900, a notice was posted on the outside of the factory door, stating that the factory would resume operations on the above mentioned date, and all employes wishing to have employment would kindly make application to the manager, Asa G. Neville. Between the date on which this notice was

osted up, to the time of starting on the 19th of September, 1900, not one of the former glass working employes made application for work.

On September 19, 1900, the works and factory were started by plaintiff with three shops, employing about twenty hands all told. Plaintiff has increased its operations progressively from time to time since until it has now employed in its factory and works about one hundred sixty hands, and is running fifteen shops, but its business operations since September 19, 1900, would have been of far greater magnitude and the number of employes much greater if it had not been harassed and interfered with in its business during the whole of the time since September 19, 1900, by the strikers and persons associated with them, which strikers include all the defendants and others to the plaintiff unknown, every day intimidating the plaintiff's employes as hereinafter set forth.

All of the defendants except James Miller, William Smith, Curran Nelson, Wick Bane, Louis Bresock, Bert Chapman, Cam Miller, Harry Miller and Peter Harvey are strikers who were employed by plaintiff on and prior to June 19, 1900, and all of the glass workers employed by the plaintiff are new glass workers who were not employed by the plaintiff prior to the last mentioned date.

Every working day since such resumption of operations on September 19, 1900, without a single exception, the strikers and their associates, the defendants, including most of them on all such days, have gathered in crowds each morning, just before the starting time of the works and factory, at the different entrances thereof, and have awaited the arrival of the new employes. The greater number so gathering together have assembled each morning at the main entrance to the factory near the office, and have awaited the arrival of the electric car bearing the new men to work, from the south, or the direction of Wellsburg, and each morning have formed themselves across the sidewalk in front of the office, from the said main entrance to the car, permitting only a narrow passage way for the employes to pass through to such entrance or gate into the factory upon the arrival of the car. While plaintiff's employes were passing from the car to and into the factory, they have been from day to day greeted by the crowd with derisive howls and taunts, consisting of such expressions as "sheepy," "bah," "there he goes," "he looks like a damn scab," "there goes that son-of-a-bitch," and the like. A number of times, on such occasions, the strikers have invited an attack upon themselves by the new men by trying to block the passage and hustling the employes, obliging them to walk around the strikers, to avoid them, and several strikers at different times on such mornings have been armed with clubs.

Shortly after September 19, 1900, one of the plaintiff's employes named John Faull, on his way to work in the morning, was met by two of the defendant strikers and assaulted in the vicinity of the factory by them, losing his hat.

A few days after this occurrence last mentioned, and during the night time, a stone was thrown by some person unknown through the window of the house and home of John Faull in Lazearville, narrowly missing some of the occupants thereof. At the same time an-

other stone was thrown against the front door of said house, cracking the panel of same.

The above allegations as to John Faull are made on reliable information and belief. Such information was furnished by John Faull himself, who is an entirely trustworthy man.

Somewhere near the last of October, 1900, William Michaels, one of plaintiff's smaller boy employes, while going to take the street car at the lower end of Wellsburg to go to work, was struck by some of the strikers. The assailants having been recognized by said

66 Michaels, a warrant was issued for those thus assaulting him, but afterwards the strikers persuaded the mother of the boy to dismiss the warrant which had been issued for their arrest.

The above allegations as to Michaels are made on belief and information from him and others.

On October 24, 1900, two employes, William Elson and Asa Neville, Jr., were assaulted by defendants William Blackburn and Jacob Heller, and the said Elson was knocked down. The above allegations as to said Elson and Neville are made on information and belief. Such information was derived from them and there is no reason to doubt its accuracy.

On November 22nd, 1900, an assault was made under cover of darkness upon the new workmen at the entrance to the factory where they were going to begin the day's work, early in the morning before it was daylight, by the striking defendants throwing stones and other missiles; two of the plaintiff's workmen being struck at the factory gate leading into the same. The name of one of the men, who were struck at the time by such missiles, was Jerome Kelly. He was hit in the back, but not seriously injured. John Cornelius was hit in the head and quite a severe wound was inflicted. His head was at once bound up and several stitches had to be taken to close the wound, but he was able to go to work the same morning.

On nearly all of these occasions each morning since September 19, 1900, the said Thomas Mooney was present, and is still present nearly every morning at such assemblages of the strikers and their associates, acting as their leader and encourager. He lives in Brilliant, Ohio, immediately opposite Wellsburg, but comes over into West Virginia nearly every morning to give his attendance with the crowd at plaintiff's factory.

Samuel O. Paull, secretary of plaintiff; H. W. Paull, its president; C. B. Ott, its vice-president; James Paull, its treasurer, and Asa G. Neville, its general manager, or such of them as were not absent on business for the company, or from being otherwise engaged, have been compelled to attend personally each morning on the arrival of the electric car with employes at the factory since September 19, 1900, and are still compelled each morning to so attend, to give the protection and encouragement of their presence to the employes of the company, and to counteract in such degree as they could, and can, the effects of the efforts as herein stated of the strikers and their associates to intimidate plaintiff's employes, and prevent their going to work or continuing in plaintiff's employment.

67 Since September 19, 1900, H. W. Paull, president of plaintiff, and S. O. Paull, its secretary, have been compelled each

day, except as S. O. Paull on a few mornings when he was away from his home at Wellsburg, West Virginia, to rise early enough to go to the street car line at six o'clock A. M. and get on a car in Wellsburg, ride to the lower end of the town, which is the lower end of the street car line, and then ride to the factory of plaintiff, about three-quarters of a mile in Wellsburg, and three-fourths of a mile more to the north, the car picking up on the way the employees of plaintiff, and carrying them to their work at the factory. This was necessary to be done every day to protect the said workmen from the strikers along the route and encourage them to continue working. If it had not been done by said Paulls the operation of the works of plaintiff would have been entirely stopped. After the workmen were accompanied to the works and were at work therein, said Paulls returned to their homes in Wellsburg for breakfast, and again in office hours about eight o'clock A. M. returned to the factory office. Before said strike this escort duty was unnecessary and was not done.

On one such occasion, about the 23d day of November, 1900, in the early morning before daylight, an electric car load of plaintiff's employees were on the way to the factory to go to work and were at the upper end of Wellsburg. Mr. S. O. Paull appeared alone at the mouth of an alley there for the purpose of boarding the car to go to the factory. Three or four strikers saw him there and walking towards him said, "There he is; let's kill the son-of-a-bitch," and advanced toward him. Mr. Paull stood his ground instead of fleeing, as they probably expected, and the strikers walked past him, but did not make the threatened attack, whereupon he boarded the car and went on to the factory. It was so dark yet that Mr. Paull could not recognize any of these strikers thus threatening him. As to this last incident, the others than S. O. Paull who verify this bill do so on belief upon information from him.

The strikers are at enmity with the street car company and have placed same on the unfair list, and have used every endeavor to persuade people from riding thereon, and they themselves always walk to the factory in the morning. The above enmity mentioned against the street car company is owing to the fact that plaintiff's secretary, S. O. Paull, is also a stockholder and manager of the above mentioned railroad company.

68 Plaintiff is reliably informed and believes, and therefore charges as true, that the strikers are obliged by the local union to be present as aforesaid at the starting time of the works and factory each morning, at such factory, upon pain of being fined one dollar for non-appearance on each day when absent.

During the warm weather since September 19, 1900, a canvas tent was erected, and has stood within one hundred and fifty feet from the factory to serve and has been used as a rendezvous for the strikers. Upon the approach of cold weather a frame building just adjoining the factory was rented, and has been occupied ever since by the strikers to serve as their headquarters.

While the warm weather lasted, for many nights, since September 19, 1900, night after night, such of the foregoing officials of the

plaintiff as could be present watched the factory part of different nights, and at times all night, because the strikers were prowling around the same during those nights, and one of their number, the defendant, James Elwell, stated to Charles B. Ott, the plaintiff's vice-president, during October, 1900, that the strikers were there because they believed plaintiff was going to bring new men during the night to work at the factory. The above allegation as to what was said by James Elwell is on information and belief as to the affiants verifying this bill; Charles B. Ott, to whom the said statement was made, is absent on a trip to Porto Rico and elsewhere.

The said defendant, Thomas Mooney, in October last, sent the plaintiff's managing officials and office force notice by Miss Nelle Reed, employed by plaintiff as stenographer in its office, that he came into the factory as an employe for the express purpose of organizing the hands, and that he had made trouble and was glad of it. She immediately delivered the message to those to whom it was sent. That the message was sent as aforesaid by her is charged on information and belief, which information was from her in October last.

Early in November last, the said Mooney said in Wellsburg, West Virginia, to said secretary of plaintiff, S. O. Paull, "I am an out and out anarchist, and I don't care who knows it. Up to this time I have been able to hold them down, but now I am afraid there is going to be trouble," and there was violence soon after, as aforesaid on November 22nd, 1900. Said Thomas Mooney further stated during the above mentioned conversation that they had boycotted the street car company, that they expected to boycott the Wellsburg Telephone Company and the Wheeling Stamping Company, because some of the officers and stockholders in the plaintiff company were also stockholders in above mentioned companies, and Mooney also said then that they would — anything further within their power to injure any and all the members of the Eagle Glass & Manufacturing Company, and hoped that they would be able to break them up, if it took ten years to accomplish their purpose. The above allegations as to what was said by the said Mooney are sworn to on personal knowledge by said S. O. Paull, and by the other affiants who verify this bill on information and belief.

Some time early in October, 1900, the plaintiff employed two men in the city of Pittsburg, in the state of Pennsylvania, and brought them from said city to Wellsburg to go to work in its factory. Upon the arrival of the train at Wellsburg about nine o'clock P. M., a crowd of the defendant strikers were there and asked these men whether they were going to work for the plaintiff. The men replied that they were. The strikers then told them that they wanted to talk to them, and the men replied that they did not want to talk anything about it, but the strikers grasped hold of them and forcibly detained them there at the depot. Mr. H. W. Paull, president of the plaintiff, there on its behalf, called upon a policeman present there, and the policeman then held back the strikers while the said secretary and H. W. Paull, president of the plaintiff,

escorted the two employes to the Granite House in Wellsburg. The strikers followed to the hotel. There they induced one of these two employes to go away with them and he returned to Pittsburg without being seen again by the plaintiff or its agents or officers. The other of said two employes wanted to go to bed and the strikers would not permit him to go upstairs from the office to the bed room. Mr. H. W. Paull called again upon the policeman, and he told the crowd of strikers that the man had a right to go to bed and compelled them to permit him to retire to his room. But in the early hours of the next morning, about two o'clock A. M., they went to the hotel and got this man out and he returned to Pittsburg without going to work. This last allegation is on reliable information and belief.

On November 27th, 1900, some boys, residents of the vicinity of the glass works, found in a field about five hundred feet therefrom, on the banks of a small run emptying into the Ohio river at a point on land much above where the late high water had reached, a can of nitro-glycerine, which they carried to a fire made of brush, and within six or seven hundred feet of the factory. The boys on that date threw the said can of nitro-glycerine upon the brush heaped fire, when it exploded killing three boys, and wounding not less than a dozen others. There have been no operations of any kind in blasting rock or otherwise, which would require nitro-glycerine to be brought for such uses into the vicinity of the factory, and through the violence which has occurred and the aforesaid intimation that there was danger of further violence, the officers and agents of the plaintiff had had their apprehensions of danger to persons and the property of the company greatly aggravated by this nitro-glycerine incident.

On November 22nd, 1900, the plaintiff caused to be issued and generally posted in Wellsburg and vicinity of the works a hand bill, a copy of which is herewith filed marked "Exhibit No. 1" and asked to be read as a part of this bill.

The offer made in "Exhibit No. 1," has not resulted in any information being given plaintiff, for which a reward was offered in the said hand bill. The plaintiff is unwilling to believe or charge that the strikers or their associates intended to cause the sacrifice of human lives by the explosion of nitro-glycerine, but, under all the circumstances, the officers and agents of the plaintiff feel what they charge is a reasonable apprehension, that the nitro-glycerine was brought to the vicinity of plaintiff's works for the purpose of being exploded to destroy either the street railroad leading to the same or some part of the works, and prevent the factory and works being operated. Plaintiff, its officers, agents, and employes are without any adequate protection from the wrongs and outrages of the strikers and their associates, including the defendants, because Lazeurville is not incorporated and has no protection against disorder and breaches of the peace, except such as can be given by a county constable. Nearly all of the said defendants are wholly irresponsible pecuniarily, without property, and nothing could be made out of such irresponsible defendants under execution issued

upon judgment or judgments at law, and nothing could be realized from them or any of them by any suit at law for damages.

Plaintiff charges that the assemblages and doings of the defendants and the others associated with them, which are herein stated, have resulted in irreparable injury to the said Eagle Glass
71 and Manufacturing Company, and its business and operations, diminishing the volume of such business and depriving it of the legitimate prospective profits thereof, occasioning damages estimable only by conjecture, the amount thereof difficult to be established certainly and accurately, and therefore not proper to be referred to the determination of a jury or by a common law action, that the plaintiff is remediless save in a court of equity and that the injuries inflicted by the defendants as aforesaid are continuous and constantly recurring, and will continue so to be unless stopped by the injunction of this honorable court. That the plaintiff has suffered and is now thus suffering great and irreparable damage and injury by reason of the said acts of the defendants, and that it will continue to suffer great damages and irreparable injury if the said defendants shall not be restrained and enjoined.

The assemblages aforesaid at the plaintiff's factory and works in the mornings, render, and will, (if permitted), continue to render, it difficult for the plaintiff to hire new men, and have compelled plaintiff to hire new men in its factory at one dollar and fifty cents per day for work which was formerly done and which would now otherwise be done by boys of legal age at sixty-two and one-half cents per day; that plaintiff would hire more men and employ them in its operations, but that the intimidation and interference with plaintiff's business practiced as aforesaid by the defendants and their associates, prevent such additional men entering into their employment; that plaintiff needs more employes, and could formerly get all it needed readily without difficulty, but cannot do so now; that the only change in circumstances which has operated against the plaintiff obtaining such additional men is the fact of the doings of the defendants herein complained of; that such doings intimidate not only those employes now working for the plaintiff but those who would work if it were not for such intimidations near the plaintiff's factory and works; that the acts and doings of the defendants and their associates herein stated clearly show a conspiracy on the part of such defendants and their unknown associates to intimidate and annoy those who want to make an honest living, which annoyances both they and the plaintiff have a right to be free from. The plaintiff would run a number of more shops if the company could get
72 more men, which this intimidation hinders it in doing, and has so hindered it as hereinbefore stated. The said acts of the defendants are also a serious, continuing, and illegal nuisance.

In consideration whereof, plaintiff prays that the said defendants and the other defendants to your orator unknown may be made parties defendant to this suit; and that your orator may be permitted to make the said unknown defendant parties by name when their names shall have been ascertained; that they, and all others associated with them in the performance of the said unlawful acts past

and threatened, their agents and assistants, may be enjoined and restrained until the further order of this honorable court, by the injunction thereof from hereafter assembling at or in the vicinity of the plaintiff's factory and works, and from otherwise interfering with the business and employes of the plaintiff, by assaulting, threatening or insulting the officers, agents or employes, or any of them, and from obstructing or interfering in any manner with the operations of your orator's works and factory, and that at the final hearing of this cause the said injunction may be made permanent and perpetual. Plaintiff also asks such other and general relief as the court may see fit to grant.

THE EAGLE GLASS & MANUFACTURING
COMPANY,

By CALDWELL & CALDWELL,
JOHN C. PALMER, JR., *Its Solicitors.*

STATE OF WEST VIRGINIA,
Brooke County, To wit:

H. W. Paull, James Paull and S. O. Paull, being duly sworn, say that H. W. Paull is the president, James Paull, treasurer and S. O. Paull, secretary, of the plaintiff named in the foregoing petition; that they know the contents thereof and are conversant from their being such officers since before December, 1900, — the facts stated in said petition and are duly authorized to make and file this affidavit on its behalf in this petition in chancery; that the facts and allegations contained in said petition are true except such as are therein stated upon information and belief, and that as to such allegations the affiants believe them to be true.

H. W. PAULL.
JAMES PAULL.
S. O. PAULL.

73 Taken, sworn to and subscribed before me by the said
H. W. Paull, James Paull and S. O. Paull, in my said county
of Brooke, this 19th day of December, in the year 1900.

ROBERT A. PRY.

*Justice Peace in, for and of Cross Creek
District, Brooke County, West Virginia.*

In the Circuit Court of Brooke County, West Virginia.

In Chancery.

EAGLE GLASS & MFG. Co.

vs.

THOMAS MOONEY et al.

This 21st day of December, in the year 1900, came the said Eagle Glass & Manufacturing Company, by its solicitors, and presented to

the court its bill, duly verified, and the exhibit thereto, praying for an injunction as therein set forth, and with said bill presented the affidavits of John W. Paull, Nelle Reed, William Elson and Asa A. Neville, Jr., in addition to the affidavits, verifying the said bill of H. W. Paull, S. O. Paull and James Paull.

And it appearing by the seven copies now here filed of the notice of this application for an injunction, and affidavits of service thereof endorsed thereon, that proper notice of such application has been given, and the defendants appearing by counsel the said application was argued by the counsel for plaintiff and by counsel for the defendants. On consideration whereof injunction is granted as prayed for in the bill until the further order of the Circuit Court of Brooke county, in the state of West Virginia, and the said defendants Thomas Mooney, William Bilingsley, William Forbes, William Jones, William Bruner, Edward Bruner, Prater Blackburn, William Hall, Andrew Antill, Elza Miller, James Miller, Bert Hanes, Otho Gunion, Art Mackey, Wick Bane, Briggs Noland, William Smith, Joseph Miller, Bert Chapman, Louis Bresock, Cam Miller, Harry Miller, Amos Jones, James Elwell, Peter Harvey and Curran Nelson and the other defendants referred to in the plaintiff's bill, as the unknown defendants in said cause, and all others associated with them

74 in the performance of the unlawful acts charged in the bill a having been done or as being threatened still to be done, their servants and agents are enjoined and restrained, until the further order of the said honorable court, from hereafter assembling at or in the vicinity of the plaintiff's factory and works, and from otherwise interfering with the business and employes of the plaintiff by assaulting, threatening or insulting its officers, agents or employes, or any of them, and from obstructing and interfering in any manner with the operations of the plaintiff's works and factory, but this injunction shall not take effect until bond be given before and filed with the clerk of said court by the plaintiff, with security approved by said clerk in the penalty of five hundred dollars, with the condition that the plaintiff will pay all such damages and costs as shall be incurred or sustained by the defendants enjoined, including the said unknown defendants, in case the injunction be dissolved, the same shall hereafter appear to have been illegally awarded.

Given under my hand the day and date first above mentioned.

H. C. HERVEY, *Judge*.

To the Clerk of the Circuit Court of Brooke County, West Virginia

(Endorsed.)

Order granting injunction, entered in chancery minute book No. 6, page 46, December 20th, 1900.

W. R. GLASS, *Clerk*.

In the Circuit Court of Brooke County, West Virginia.

In Chancery.

EAGLE GLASS & MFG. Co., a Corporation,

vs.

THOMAS MOONEY, WILLIAM BILLINGSLEY, et al.

We, Caldwell & Caldwell and John C. Palmer, attorneys for the plaintiff in the above entitled cause, and George W. McCleary, attorney for all of the above named defendants, being desirous and willing to settle all the matters in controversy in the above entitled cause, without further litigation and expense, the attorney for all said defendants now agrees and stipulates for them and for each of them,

individually and collectively that the temporary injunction granted against each and all of said defendants by Hon.

75 H. C. Hervey, Judge, and entered in Chancery Order Book No. —, page —, in Brooke county, West Virginia, entered as a vacation order on the — day of December, 1900, shall be made and entered as a perpetual injunction. And the said defendants and each of them do now by their said attorney, George W. McCleary, hereby authorize and direct that said judge, Hon. H. C. Hervey shall prepare and enter of record in the chancery order book of Brooke county, West Virginia, an order perpetually enjoining and restraining each and all said defendants from their doing and actions complained of and embraced in the above cited vacation temporary injunction. And the plaintiffs, by their said attorneys, accept said settlement and agree to the same; and plaintiffs shall have judgment for costs. Said permanent injunction may be entered at a special term of — as a vacation order.

Witness the following signatures Dec. 31, 1900.

JOHN C. PALMER,

Att'y for Plaintiffs.

GEORGE W. McCLEARY,

Att'y for Defendants.

In the Circuit Court of Brooke County, West Virginia.

In Chancery.

THE EAGLE GLASS & MFG. Co.

vs.

THOMAS MOONEY, WILLIAM BILLINGSLEY, et al.

This 2nd day of January, 1901, this cause came on to be heard by consent of both the plaintiff and defendants, and the said defendants waive process and service thereof as to all of them who have not been duly served, and all of the defendants waive proceedings at rules, whereupon the cause was heard by consent of the plaintiff and all of

the defendants, upon the bill, the exhibit, filed with said bill, and the former orders and the injunction herein, and with like consent the court doth adjudge, order and decree that the injunction awarded the plaintiff in this cause on the 21st day of December, in the year 1900, against each and all of the defendants by the Honorable H. C. Hervey, judge of this court, and entered in Chancery Order Book No. 6, page 46, in this court, be made a perpetual injunction against each and all of the defendants, and that the defendants do pay to the plaintiff, its costs by it about its suit in this behalf expended, and this being a final decree it is ordered that the papers thereof be filed in the clerk's office accordingly.

The plaintiff consents to the above decree.

THE EAGLE GLASS & MANUFACTURING
COMPANY,

By CALDWELL & CALDWELL, *Its Attorneys*.

The defendants, each and all, consent to the above decree.

By GEO. W. McCLEARY, *Their Attorneys*.

STATE OF WEST VIRGINIA,

County of Brooke, To wit:

I, Frank E. Foster, clerk of the Circuit Court of Brooke county, West Virginia, do certify that the foregoing is a true copy of the bill of complaint, filed January 2nd, A. D. 1901, in the case of Eagle Glass and Manufacturing Company versus Thomas Mooney et al, that the copy of the order granting injunction hereto attached is a true copy of such order as entered in Chancery Minute Book No. 6, page 46, date of December 26th, 1900; that the agreement of parties to the final decree hereto attached is a true copy of such agreement filed in said cause on January 2nd, 1901; that the decree perpetuating injunction hereto attached is a true copy of such decree as entered in the Chancery Minute Book No. 6, page 48, date of January 2nd, 1901; as fully and as the same appears of record in my office, of the records of Brooke county, West Virginia.

Given under my hand and the seal of our said circuit court, done at the courthouse of said county, this 5th day of July, A. D. 1913.

[SEAL.]

FRANK E. FOSTER,

Clerk Circuit Court,

By W. F. FOSTER,

Deputy Clerk.

EXHIBIT NO. 2 WITH BILL.

(Filed July 28, 1913.)

(This exhibit is copied in full on page 11 of the manuscript of this transcript of record.—Clerk.)

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Memorandum as to Exhibits 3 to 8 with Bill.

(The originals of these several exhibits with bill, numbers 3, 4, 5, 6, 7 and 8, respectively, are transmitted to the United States Circuit Court of Appeals with this transcript.—Clerk.)

Affidavit of Charles B. Ott.

(Filed July 28, 1913.)

STATE OF WEST VIRGINIA,
County of Ohio, to-wit:

Chas. B. Ott, being by me first duly sworn upon his solemn oath, says: My name is Chas. B. Ott. My residence is Wheeling, West Virginia. My age is fifty years, and my occupation is vice-president of the Eagle Glass and Manufacturing Company. I have charge of the glass ware sales department of the above company. I have occupied that position and attended to that part of the company's business for about fifteen years last past. I have been selling goods for the company right along for about the last fifteen years. I have been selling glassware for about twenty-six years on the road. Prior to selling glass ware for the Eagle I was on the road selling glass ware for the Central Glass Works at Wheeling, U. S. Glass Company at Pittsburg, W. Va., Glass Company at Martins Ferry, Ohio; in all my experience has covered twenty-six years in that line on the road. I think it was in 1898 that I went with the Eagle people. The Eagle Glass and Manufacturing Company is a corporation, was organized in 1897. Prior to the incorporation of the Eagle Glass and Manufacturing Company, in 1897, the Paull Brothers, who are the incorporators amongst others of the Eagle Glass and Manufacturing Company, were connected with the Nail City Stamping Company which had large stamping works in Wheeling, West Virginia. The Nail City Stamping Company broke up, and at the time of breaking up, it has a plant at Wellsburg, West Virginia. The Paull brothers, who became incorporators of the Eagle Glass and Manufacturing Company, and who were, at the time the Nail City Stamping Company broke up, employed by the Nail City, acquired the Wellsburg plant property that belonged to the Nail City Stamping Company, and then or shortly afterwards formed the Eagle Glass and Manufacturing Company.

78 The Eagle Glass Company manufactures gas and electric glass ware; druggists' sundries in both glass ware and metal; novelties, in both glass ware and metal; and everything in oil cans, from a sewing machine oiler to a locomotive oiler, and also have a number of special glass ware molds for private consumers, where large quantities of the product are manufactured for them under special contract. There is a certain amount of dependency—one department upon the other. For example, one department will make the glass jar or container and then the other department will make the metal top or cover. We have the glass ware branch divided into two different departments—gas and electric department and the druggist sundry department. The metal department is by itself. But, as I have said, it has its own relation to the glass departments, and the glass departments have their own relation to the metal department, one depending to a certain extent upon the other, that interdepend-

ence being based upon the character of the product. The gas and electric department does half, if not more, depending upon the different years in part, of the company's glass ware trade. That branch of the company's trade has been increasing very rapidly of late years, and during the last year has made an advance of between twenty-five and thirty per cent. over the year preceding, during which year the company had made its largest record.

The Eagle Glass and Manufacturing Company now runs non-union; it has always run non-union. By non-union, I mean that it is not run through association or by dealings with the American Flint Glass Workers' Union or with any union that is affiliated with the American Federation of Labor.

In its practical operation, the Eagle Glass and Manufacturing Company is distinctive in its methods of manufacture and in the class of product which it puts upon the market. For example, it uses tanks for melting glass instead of pots for melting glass. One of the advantages of that is that the glass is always in condition to work and there is no delay like in a pot furnace. That results in lessening the cost of the output. Another advantage is that the capacity of the tank is many times larger than that of a pot furnace. A tank may have a capacity of a hundred tons of glass and that of a pot furnace approximately fifty per cent. less. In operating for our class of trade there is a considerable reduction in the cost, up to the point of output of finished product, and, therefore, a very

79 decided saving in cost of manufacture by reason of the use of the tank system rather than of the pot system. Another advantage of the tank system is that men are worked in shifts continuously and without interruption owing to the glass being always melted, and the men are not obliged to wait for the glass to be melted as in the case of a pot furnace. A tank costs about approximately five thousand dollars and lives for approximately six or eight years. The life of the tank will vary according to the kind of the glass we use in the tank. To illustrate: if crystal glass is produced in the tank the life of the tank is longer than it is where in a tank we use or make opal glass owing to the fluxes or chemical composition used in the composition of the opal glass. I do not know of any of our competitors in the gas and electric glass ware business that use the tank system to produce such articles. One of the results of the use of the tank system for such articles is that the article can be produced for a less cost than can the same article be produced by using the pot furnace system, as previously explained. In consequence of our being able to manufacture our glass ware in tanks it has enabled us to put a popular price line on the market, which has so largely increased our business that at no time have we had sufficient stock on hand to fill our orders, and we are compelled to run virtually without any shut down throughout the year. We aim to and ordinarily do run night and day, year in and year out. This special line of gas and electric glass ware or the trade for this special line of gas and electric glass ware has been built up within the last five or six years and is constantly increasing. I speak upon this subject advisedly

cause of my intimate acquaintance with the trade, as I have had charge of the selling department of this line since its inception.

We have only one competitor to my knowledge who is making gas and electric glass ware out of tank glass. The balance manufacture their gas and electric glass ware from pot glass and at a higher cost. I understand that some effort has been made lately to unionize the Mac-Beth-Evans Glass Company of Pittsburg, Pennsylvania, but how successful the union has been in unionizing this plant I do not know.

In 1900 and 1901 the American Flint Glass Workers' Union undertook to unionize our Eagle plant; our men were brought out on a strike, and we were idle from June until September. We resumed still non-union, and encountered much opposition of one character or another from the union in their efforts to unionize us, going to the extent of violence toward our employees and embracing picketing, etc., and other things usually engaged in during such contests, and we applied to the Circuit Court of Brooke county for an injunction, which having been granted was subsequently made permanent. The injunction restraining the individuals who were disturbing factors.

During the time that this strike was on, and up to the time of the abandonment of the effort by the union to compel us to become union, we had all sorts of difficulty. During that contest over the unionizing of our plant by the union, there was an explosion of nitro-glycerine, nor far from our plant. It had been cached in some bushes. It was found there by some children who took it to a bonfire which they had started somewhere near. The can was of a size to contain a gallon; the children did not know what it was nor the danger of handling it and put it upon the bonfire, with the result that the can of nitro-glycerine exploded; killed a number of children and wounded a number of other persons. Most of the killed and injured were boys from fourteen to eighteen years of age.

During the same struggle, we suffered a destruction by fire of a large part of our works, the part destroyed being our stock building, decorating building and also office building; the only thing saved was the factory in which we make our glass. This fire was of incendiary origin. The fire occurred on a Sunday afternoon, and started at a place and under circumstances which made us practically certain that the fire was not accidental, but was designed. This fire cost us about sixty-five thousand dollars above our insurance. And the strike and the effort to unionize us at that time cost us, exclusive of the loss by the fire, about one hundred thousand dollars. We have always believed and I believe now that the fire was chargeable to the effort to unionize. How closely so, we cannot in the absence of definite proof say, and, of course, would not allege. But assuming that the fire loss resulted from the effort to unionize, whoever may have been the direct cause of the fire, our entire loss of that effort to unionize, up to that time, would amount to about one hundred and sixty-five thousand dollars. The strike lasted nearly two years. By that I mean—from the time the unionizing was commenced until the open efforts ceased a period of about two years was covered. The

injunction that was granted in 1901 by the Circuit Court of
81 Brooke county upon the application we made for an injunction at that time was our salvation. The injunction was violated and punishment meted out, with a severe warning that the prohibited actions must be stopped. Following that the efforts to unionize greatly ceased and by the end of two years or thereabouts the entire effort was apparently at an end.

We were subjected to a further effort to unionize us about four or five years ago, but the effort was unsuccessful.

About six weeks ago, the union undertook again to unionize our plant. A letter was received by us from T. W. Rowe, president of the American Flint Glass Workers' Union dated June 10, 1913. Rowe wrote to Mr. S. O. Paull, our secretary. Mr. S. O. Paull is a stockholder and is a member of the board of directors and is secretary of the company. Rowe addressed his letter to "S. O. Paull, president Eagle Glass Co." As a matter of fact Mr. H. W. Paull is the president of the company. There are five members of our board: H. W. Paull who is president of the company; Chas. B. Ott who is vice-president of the company; James Paull who is treasurer of the company; and S. O. Paull who is secretary of the company. Those four are the active directors. We have one other director, Jos. F. Paull, who lives in Wheeling. I am not sure whether Jos. F. Paull was advised of Rowe's letter before we refused to meet Rowe for the purpose of arranging to unionize the factory as he had requested in his letter. Four of the members above named being all of the board with the exception of Jos. F. Paull did meet informally and discussed the letter and determined to refuse to meet Rowe and also determined to resist the efforts of the American Flint Glass Workers' Union to unionize us, meaning our factory and our men. A telegram was sent to Rowe by S. O. Paull on June 12, 1913, refusing to meet Rowe.

About six weeks ago, as I said before, one or more organizers appeared and took up work in an effort to organize our men at our factory and that effort has been kept up continuously and is being kept up now. We do not know the probable result; but we do know what our experience was before when the same union undertook to organize us in 1900 and 1901. We are definitely resolved not to submit to the union, and the union has been so informed, not upon one occasion only but upon many occasions, and this attitude
of our company has been known to the union since before
82 the attempt to unionize us in 1900 and 1901 as I have stated.

We are unalterably opposed to being made subject to the control or dominance of the American Flint Glass Workers' Union.

The present effort is causing great disturbance in our factory and amongst our men and threatens us with imminent and irreparable injury unless we can be protected by some injunction similar to what we had before.

We have in use now in our factory an employment card which sets forth an agreement between our company and our men that our men are not members of the American Flint Glass Workers' Union, and will not become so while employed by us, and we on

side have agreed that while they are employed with us we will have our factory non-union. We want to adhere to our agreement with our men, and our men want us to adhere to that too. Likewise, we want our men to adhere to their agreement with us. We are informed by our men that they are entirely satisfied with their employment with us, with the wages we pay them, with the conditions under which they work, and that they want to remain in our employ. We believe our men, and think that if left alone they would not think of leaving our service and would not think of joining the Union. This effort to unionize us, however, keeps the men in constant annoyance through the efforts of the organizers to interview them and plead with them and threaten them, and we do not, therefore, know what the Union may be able to accomplish. Therefore, we want an injunction if we can get one.

As I have explained before, we always have orders far ahead, and are not able from our manufactured stock on hand to fill our orders. At the present time, we have on hand orders sufficient to keep us for an indefinite length of time, covering a period of three months at least. These orders we cannot fill from any stock we now have on hand nor can we buy the finished produce from the trade from our competitors and thus fill our orders with goods which could be accepted by them in lieu of what we have contracted to furnish them. If we are not disturbed by the organizers and are not compelled to unionize we fully expect to fill all of these orders and to continue our business uninterrupted as we have continued since the abandonment by the union of their attempt to unionize in 1900 and 1901.

Our class of trade is such that if we would fail to fill our orders and if we were disturbed in our running so that we could not operate in full and produce as we have produced, we would not only lose the custom of those whose orders we now have and of those whose orders we expect to have, but we will be virtually thrown out of business, and one that our trade has been diverted and one it has been put in the hands of our competitors would entail a long and costly effort on our part to build up the business which we now have. We cannot afford to shut down pending an effort to unionize us nor can we afford to be unionized. If we are shut down we are put out of business; if we are unionized, when the union's rules applied to us will so increase the cost of our product that we cannot successfully compete with those who furnish the same line of ware produced under union conditions from pot furnace glass.

It has always been our policy to sell the largest trade in the country and not solicit the smaller or retail trade. We have done this because we want to sell a large volume of goods at popular prices which would keep our factory running night and day throughout the year and enable us to give steady employment to our men every day in the year.

We have contracts with several of the municipal lighting companies in different cities of the United States, outside of West Virginia, which, if we were unable to fill, would work a hardship not

only upon ourselves but upon those with whom *he* have the contracts.

Another reason for selling our goods at popular prices is in order to allow our trade to secure contracts for lighting large buildings throughout the country. We make sales to large jobbers who supply this sort of trade. We have the reputation among the large trade for making the largest line of popular priced lighting glass ware in the United States, and in consequence if we were interfered with it would mean a very serious loss not only to ourselves but to those with whom we have business dealings. We have no local trade to speak of and none of any magnitude in West Virginia, as there are no jobbers who handle a sufficient quantity of our line of goods during the year to justify our seeking their trade.

We pay our men as much as they can make elsewhere, but the union's rules if applied to us, owing to our tank system and to other methods of operating which we have in use and which are peculiar to our factory and to our trade, would so increase our cost as to put us out of business.

We are informed by some of our men who have been told
84 so by the organizer Joseph Gillooly, and we believe it to be true, that the American Flint Glass Workers' Union will hold its annual convention at Newark, Ohio, beginning July 7, 1913; that the convention will not be over for ten days or so, and that Gillooly will be back again at his work in trying to unionize our man by Monday, July 21, 1913, and that as soon as he returns to Wellsburg and takes up this work again he will call our men out on strike, Gillooly making the claim that he is succeeding in the work he is doing of getting our men to join the union. Under these circumstances we believe we need the protection of an injunction from the Federal court to prevent this union and its organizer, Gillooly, from seeking to get our man to break their contracts with us—not to join the union while they are working for us—and also to prevent us from being compelled to run union or go out of business, or if we have to run union to help us to prevent our being required to break our contracts with such of our men who refuse to join the union and with whom we are under contract to run our factory non-union while they remain in our employ.

In asking for such an injunction we claim that the shutting down of our factory is imminent and that irreparable loss would come to us if we were required to run union or if we were obliged to shut down and go out of business.

These men who are causing us this trouble are all citizens of Ohio and we cannot safely give notice to them of our intention to apply for an injunction without immediate and irreparable loss or damage happening to us before the hearing upon a motion for a temporary injunction or restraining order can be had, and therefore we ask that we be not required to give notice to them of our intention to ask for the injunction.

In addition to the fact, that Gillooly says he is ready on his return to Wellsburg to call the strike or to use dynamite, whatever he may mean by that, we are afraid that if notice is required these

same people will simply stay away from Wellsburg and will send some citizen of West Virginia to complete the work Gillooly has been doing and will have the men called out just the same as if Gillooly were to come and do that himself, but the difference would be that we might not be able then to get service on these citizens of Ohio and might not be able to come into the Federal court. Therefore we would like to have the giving of notice omitted. All of the proposed defendants are now out of West Virginia and are in Ohio, and Gillooly will not be in West Virginia again before July 21, 1913, and no notice could be served before July 21st, which date would then be too late for the protection of our company.

CHAS. B. OTT.

(Two originals executed.)

Taken, subscribed and sworn to before me this 9th day of July, 1913.

[NOTARIAL SEAL.]

HERMAN A. HUNDT,
Notary Public in, for and of Ohio
County, West Virginia.

My commission expires Dec. 3d, 1919.

Affidavit of H. W. Paull.

(Filed July 28, 1913.)

STATE OF WEST VIRGINIA,
County of Ohio, To wit:

H. W. Paull, being by me first duly sworn upon his solemn oath, says:

My name is H. W. Paull; my residence is Wellsburg, West Virginia; my age is 47 years; my occupation is president of the Eagle Glass and Manufacturing Company. The company has its plant at Wellsburg, and its buildings, including the enlargement now in the course of construction, will cover a square and a half. The glass making department occupies an iron-clad structure. The decorating and metal and packing departments are in brick buildings. The office building is separate and is a frame structure. We are arranging to enlarge our factory by constructing another brick building, which will be an enlargement of our metal department, and will be partially occupied by our new offices. We expect to complete this addition and have it in use some time within the next three or four months. To indicate the general magnitude of our works, I would say that exclusive of our offices we carry three hundred thousand dollars of fire insurance. We have between four hundred and five hundred employees. The number varies a little from time to time. At the present time we have about four hundred and fifty. Before the Eagle Glass and Manufacturing Company

was formed, which was in 1897, I was the factory manager
86 of the glass making department of the Nail City Stamping
Company. This glass department was located at Wellsburg.
The Nail City Stamping Company was located in Wheeling, and
my brothers, Jas. Paull and S. O. Paull, were in Wheeling at that
time working for the Nail City Stamping Company, in which they
were interested. In 1897, my half brother, Jos. F. Paull, of Wheel-
ing, and my full brothers, Jas. Paull and S. O. Paull, joined me
with my brother-in-law, W. C. Jacob, in acquiring the Wellsburg
glass manufacturing plant which I had managed for the Nail City
Stamping Company, and we then started business and later pro-
cured a charter from the state of West Virginia for the Eagle Glass
and Manufacturing Company. The present authorized and the
actual paid-in capital stock of the company is one hundred and
twenty-five thousand dollars. We have a bond issue of one hundred
thousand dollars, all outstanding, which bond issue is secured by a
mortgage on our Wellsburg property, including the plant and in-
cluding some other property in the city of Wheeling which is owned
by my two brothers, Jas. Paull and S. O. Paull, and myself, indi-
vidually; that is, we have interests in the Wheeling property which
we have also put under the mortgage securing the bonds in addition
to the security which the Eagle company itself furnished by mort-
gaging its property and plant at Wellsburg. The bonds are payable
in series, the entire series to be paid in 1930, and beginning with the
first day of July, 1915, and every first day of July in every year
following, up until all of the bonds shall have been paid, six bonds
are to be paid annually. The interest is payable semi-annually—on
the first day of January and on the first day of July in each year.
We expect to pay off our bonds from *when* we make in our business.
That is the only way we have in which to pay the bonds and remain
in business. If we are permitted to operate and if we continue to
enjoy the same measure of prosperity and the same trade that we
have had in the past and now have, we will have no difficulty at all
in taking care of our obligations promptly as they mature. We
fully expect to be able to pay off our bonds out of the earnings of
our business and when and as our obligations mature. We do be-
tween five hundred thousand and six hundred thousand dollars'
worth of business a year. Owing to the character of our trade, we
are obliged to run continuously to meet the varying demands of our
varying products, and the volume of our entire business runs
87 nearly uniformly from forty-five thousand to fifty thousand
dollars per month, year in and year out.

We run a non-union factory and have never dealt with the Amer-
ican Flint Glass Workers' Union. We deal with our own employees.
We have at times been subjected to efforts to unionize us in the past.
In 1900 and 1901 we had a two-year struggle, and resorted to an
injunction to protect us against the efforts of the union to compel
us to run union. About four or five years ago the union tried to
unionize us again. About six weeks ago they started again to try
to unionize us, and that effort has been going on and is now going

on. We do not know where the thing will end, but it is causing us a lot of annoyance, and if the claims as made by the Union organizer are borne out by the facts then they are making such headway with our men that it is imperative that we should be protected. Therefore, we would like to have an injunction from the federal court if one can be obtained. The union imposes unnecessary and more men on a shop to produce a certain article of glassware than the number of men we now use to produce the same article, which greatly increases its manufacturing cost. The union also prevents us from having direct communication with our men in the event of a grievance, and makes us deal with them through the medium of a committee which prevents us and the men from presenting either side of the question fairly and impartially. In every instance, our workmen are permitted to make an unlimited quantity of articles of glass ware in a turn of five hours; while in many cases the union restricts them to a certain quantity within five hours or a turn, and when this quantity is completed they then quit work or knock off, whereas if they were permitted to finish the turn they would make more within the time mentioned, thereby increasing our production and tonnage and thus reducing the cost of manufacturing—by a larger tonnage, under a fixed charge within a given time. The union also insists upon a summer shut down of from three to six weeks. This also decreases production and causes a corresponding increase in the cost of manufacture, as just explained. As we now operate our plant, we run continuously with no shut downs, except for repairs or holidays. By so doing, we keep down the cost of production as just explained. In the years we have operated our factory we have never had any labor troubles or any strikes, except the troubles brought about by the efforts of the
88 American Flint Glass Workers' Union to unionize us. And we have not had a dispute with our men that has not been settled with them to their satisfaction. Our men are now satisfied so they tell us, not only with our operating our plant non-union but with wages and general conditions. The recent labor agitation came up and we were informed that an attempt was being made to organize our men. We called them together in a meeting and they were addressed by my brother, Jas. Paull, who stated that we would not change our policy of operating our glass making department as far as rules were concerned governing the men, and further stating that in the event of the men joining the union and walking out we would not unionize nor would we enter into any conflict with them, but we would simply close down our glass making department and eliminate it from our business, devoting our time, energy and capital to the developing of our metal making department. The men were given their choice of continuing at work under our present system of rules and non-union or join the union and seeking employment elsewhere if they expected to follow glass making as a trade. After this meeting the men appointed a committee of one to wait upon the management and state that they were satisfied with their wages and working conditions and that they would not join

the American Flint Glass Workers' Union and that we had nothing to fear from them on this score. Subsequent to this meeting every individual glass worker signed a card stating that he was not a member of the American Flint Glass Workers' Union and that he would not join such a union while in our employ, and if he wanted to he would leave our employ, and further that he would make no attempt while in our employ, to unionize any of his fellow-workmen against our wishes, and we in our turn agreed we would run non-union. Without exception every glass worker signed a card without protest. No pressure of any kind was used to get the men to sign these cards, and in asking them to sign the card we protected them by agreeing that while they are working for us non-union that we would run non-union. Our idea in adopting the agreement, as expressed in the card, was that we thought we would be entitled to protection against interference by the union and by any other outside influence; in other words, that no outside interest could interfere with what we and our employes might agree to do amongst ourselves. The men

89 were also given protection by us by our assurance that they would not be thrown out of employment because of our decision to operate a union factory at a time when they would be without a union card, thus preventing them from getting employment either from the union or from ourselves if we ran union when they themselves were not members of the union. In other words, by that agreement we enable the man to continue to be a non-union man if he wants to be a non-union man, but at the same time he may if he wants to join the union quit working for us and join the union and be a union man. But by the contract we want to be protected against outside people inducing our men to break their contracts with us, join the union, and force us to break our contracts with our men and to run a union factory instead of a non-union factory which we want to run and which we agreed to run.

The scope of our business has been very greatly enlarged by our making attractive articles of gas and electric glass ware at popular prices, which is something the trade has never offered to them by other factories making this class of goods. For this reason, we nearly uniformly have on file a large number of unfilled orders which is the case with us at the present time. In the event of our being compelled to close out glass making department we would be unable to fill these orders for the reason that we could not make the glass ware ourselves nor could we purchase same, either in blank or finished, from any other factory, because of the prices which would be charged for same and which would practically absorb our profit. If left unmolested by outside interference it is our expectation to fill the orders which we now have on file with a fair amount of profit and with a satisfactory profit at the end of the year on the volume of business done. Should we be prevented in making the necessary glass ware to fill our orders now on hand and which we expect to fill, we will be occasioned a great loss in consequence. The loss of profit in our department of lighting glass ware, either through our

inability to make the necessary glass in blank form or in decorated to fill these same orders we now have on hand, would be approximately ten thousand dollars. Other departments which are supplied with glass from our glass making department would suffer proportionately with the decorating or lighting glass department. Heavy and fixed charges always continue whether the tonnage in our glass making department is large or small, and in the event of this department being closed entirely our loss would be heavy from this cause. Owing to the dependence of the other depart-

90 ments of our works upon the glass making department our entire loss on all present unfilled orders would be not less than fifteen thousand dollars, if the glass department were forced to close. If we do not fill our present orders now on hand, we will in all probability lose a large portion of the custom of those from whom those orders we now have on hand were received. The condition of the trade in that line of business is such that the demand for the product must be met and competition is such amongst producers that trade once diverted is hard to recover.

Owing to our system of melting glass, known as the continuous tank system, we are enabled to give our workmen melted glass continuously through a day of twenty-four hours, and for this reason they are not delayed in waiting for the glass to melt before starting to work, which is the case in the pot furnace system of melting glass. The men can work in shifts or turns of eight or ten hours and then go off and a new set of men go to work where the first set left off. In this way, no workman is obliged to wait for melting glass but can start to work promptly at the starting time of his respective turn. While the tank system is preferable to us for our line of business glass manufactured in the pot system has a greater field of usefulness: in this, that there are articles which may be made out of glass manufactured in the pot system which cannot be as well manufactured out of glass made in the tank system, and, therefore, manufacturers of lighting glass ware generally use the pot system in preference to the tank system. The lighting glass ware is to such manufacturers manufacturing pot glass simply a part of their business, while to us, using the tank system, it is the main part of our product. In other words, by using the tank system, we limit the field in which we make use of the glass we make in the tanks and that reduces the cost of manufacturing the article out of the tank glass. The manufacturer who uses the pot system is enabled to manufacture other articles out of his product from the pot system, which articles could not be as well manufactured out of the tank glass; but in addition that same manufacturer may produce lighting glass which will compete with ours but that lighting glass necessarily costs that manufacturer more to produce than it costs us to produce the same articles manufactured out of tank glass.

(Two originals executed.)

H. W. PAULL.

91 Taken, subscribed and sworn to before me this 9th day of July, 1913.

[NOTARIAL SEAL.]

HERMAN A. HUNDT,
Notary Public in for and of Ohio
County, West Virginia.

My commission expires Dec. 3, 1919.

Affidavit of James Paull.

(Filed July 28, 1913.)

STATE OF WEST VIRGINIA,
County of Ohio, To wit:

Jas. Paull, being by me first duly sworn upon his solemn oath says:

My name is Jas. Paull. My residence is Wellsburg, West Virginia. My age is fifty-one years, and my occupation treasurer of the Eagle Glass and Manufacturing Company. I have been engaged in the glass manufacturing business since 1893. In 1893, my brothers, H. W. Paull and S. O. Paull, and I purchased the glass manufacturing plant at Wellsburg which had been owned by the Nail City Stamping Company. After we bought that factory we ran as a partnership until 1897, and then in 1897 we incorporated as the Eagle Glass and Manufacturing Company. Before we incorporated we had used the word "Eagle" in our name, and I think I did business under the name of Eagle Glass and Manufacturing Company, although we were not incorporated under that name at that time. That is nearly twenty years ago, and without looking to the matter up I am hardly able to speak definitely from my present recollection. The incorporators of the company in 1897 were my half-brother, Jos. F. Paull, and my two brothers, H. W. Paull and S. O. Paull, and my brother-in-law, W. C. Jacob. These same incorporators are together with Chas. B. Ott and one of our workmen who owns ten shares the present owners of all of the issued stock of the company amounting to one hundred and twenty-five thousand dollars, and the incorporators, Jos. F. Paull, Jas. Paull, H. W. Paull and S. O. Paull have always been and are now directors, and Chas. B. Ott, since he became a stockholder and the vice-president and associated with us in the business, has been and is now a director.

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We run our factory non-union and have always run it non-union and we are resolved to continue to run it non-union or else we will discontinue the glass making part of our business. We are determined not to come under the domination and control of the American Flint Glass Workers' Union. We have had more or less trouble with that union owing to the efforts of that union to unionize us. In 1900 and 1901, we had a two years' struggle with them. We joined them in the state court, and part of our factory was destroyed by what we have always believed was an incendiary fire. We were shut down for three months or more. Before we started up again

the men had been unionized and called out on a strike by the American Flint Glass Workers' Union, and we suffered a loss of not less than one hundred and fifty thousand dollars. The partial destruction of our works cost us sixty-five thousand dollars over and above our insurance. Besides that, we lost our trade and all the profit we would have made had we been permitted to continue running. We were sorely tried and handicapped in our business by this union for two years or thereabouts. After the union gave up the struggle they were making at that period of time, and which struggle they gave up only owing to the injunction, we resumed work again non-union after we had rebuilt our works, and from that time on until the present we have continued to operate non-union and to operate successfully and within reasonable limits to make money. We have encountered no further effort on the part of the American Flint Glass Workers' Union to organize us, up to this time, except four or five years ago, when they made an effort, but they were unsuccessful at that time, and they abandoned the attempt after a month or six weeks work in trying to bring out our men. By a letter dated June 10, 1913, T. W. Rowe, as the president of the American Flint Glass Workers' Union, wrote to us asking for a conference in order to discuss and conclude the terms upon which we would unionize, asking that we telegraph him and fix the time and place of meeting. We wired him that we had received his letter and that it was impossible to arrange to meet him. Following that he wrote us a letter, dated June 12th, in which he said he had received the telegram, quoted it, and added if we would arrange a meeting in the near future he would be glad to take up with us the subject mentioned in his letter, and which I said was the unionizing of our works. Before this time, the American Flint

93 Glass Workers' Union had had one or more organizers at work, dating back to a date about six weeks or two months ago. We knew of the efforts to organize us at the time we received Rowe's letter and our refusal to meet him was in line with our determination not to unionize. After the correspondence mentioned, the work of trying to unionize us still continued with as much vigor, if not more. Every effort that the union can make is being exerted by the organizer, Joseph Gillooly, who is now here, and by such other persons as he has associated with him and who sympathize with him in his plans.

Shortly after we had learned of the efforts to organize our men, we called all of the day turn men together and also at a later hour the night turn men, but all on the same day, there being present with me my brother, H. W. Paull, president of the company, and Mr. Chas. B. Ott, vice-president, Mr. S. R. Caldwell, assistant treasurer, and Mr. W. C. Jacob, assistant secretary. I stated to the men that we knew of the presence of the organizer in our midst, who was there for the purpose of trying to organize the glass workers. I stated to them that we had always been a non-union factory ever since our organization and had always dealt directly with the men. I further stated that we would not under any circumstances recognize the glass workers' union, but that we had been in the past and were expecting to pay now as good wages for the services of our men for the same

class of work as was being paid in any other factory; that we valued their services as highly and that they were worth as much to us as to any other factory. I further stated that it was their privilege to join the American Flint Glass Workers' Union if they so desired; that that was a matter that they must settle for themselves, but that I was authorized to say for the company that if they joined the union and went out in a body on a strike we would refuse to contest the matter with them. I gave them as the reason for this that we were not willing to subject ourselves or our families or the community to scenes of disorder, such as occurred during a previous attempt to organize our factory. I further stated that we felt that we were in a position to do more for our men than any outside organizer or strangers that would come into our midst; that we had had their interests at heart and could do more for them than any one else. I further stated that if they went on a strike that the glass making department of our business would be closed down with the expectation of not

running it again for the reason just given them. I further
 94 stated that while this would involve a loss both to ourselves and to them and would necessitate their moving from Wellsburg, if they desired to continue in the same line of business, we felt this to be our duty rather than to engage in any contest with them. The matter was taken under full consideration by the men and about two days after I had made the talk to the men they had a meeting and sent one of their representatives to me and he stated that everything I had stated to the men was perfectly satisfactory to them, and that they desired to continue in our employ and under the same conditions and relations that had always existed. A few days after I had this talk, we entered into a formal agreement with all of our glass workers, and each one of them signed the card, of which the following is a copy:

"WELLSBURG, W. VA., — — — — —"

I am employed by, and work for, the Eagle Glass and Manufacturing Company with the express understanding that I am not a member of the American Flint Glass Workers' Union, and will not become so while an employe of the Eagle Glass and Manufacturing Company, and that the Eagle Glass and Manufacturing Company is run non-union, and agrees with me that it will run non-union while I am in its employ. If at any time while I am employed by the Eagle Glass and Manufacturing Company, I want to become connected with the American Flint Glass Workers' Union, or any affiliated organization, I agree to withdraw from the employment of said Company, and I agree that while I am a employe of that Company, I will not make any effort amongst its employes to bring about the unionizing of that Company's glass and manufacturing plant against that Company's wish.

I have either read the above or heard the same read.

— — — — —"

This agreement was entered into most heartily and willingly by the men, many of them expressing great satisfaction after the same

had been signed, stating that it now gave them something upon which to stand. Notwithstanding the agreement which has been entered into between our company and our men, as per the card signed by them, the union has still continued to endeavor to break this

95 contract, first coaxing them to join the union, say nothing about it, secretly remain in our employ, coax other men in our employ to join the union and help unionize our plant, and telling our men that that card is just what they wanted and that it is of no value and that they didn't care anything about it, and if they were willing to do that, promising them situations elsewhere if they would leave our employ.

We carry three hundred thousand dollars insurance, excluding our office building.

We have over four hundred employes, and our employment list numbers generally from between four hundred to five hundred. I think we have about four hundred and fifty employes now. This number of employes is made up of the employes in the different places of business in which we are engaged. In our glass works and related shops we employ about three hundred.

We have a bond issue of one hundred thousand dollars, the payment of which bonds is secured by a mortgage or deed of trust upon our plant at Wellsburg. The deed of trust also covers interests of myself and my two brothers, S. O. Paull and H. W. Paull, in some real estate in Wheeling, but that is merely our own individual property. We put that in in order to increase the security of the bond issue. Our bonds are payable in series of six bonds of one thousand dollars each every year, beginning with July 1, 1915. The interest is payable every six months, that is, on January 1st and July 1st in each year. All of the bonds are to be paid by July 1, 1930.

We have no means of paying the bonds and keeping our property and plant intact and in operation except by running our factory, engaging in business and earning the amount of the bonds from the profit on our business from month to month and from year to year. If left alone, we expect to promptly and fully pay off all of this bond debt. If we are compelled to shut down or to abandon our glass business, or if we are compelled to unionize and be handicapped by the union and our cost of production so increased as to practically eliminate our profit, we never can pay off our bond issue. We are entirely dependent upon the power of the court to secure for us the right to continue in business, and our methods are entirely lawful and our relations with our men are entirely friendly. We have never had any labor trouble with our men and have never had a strike except that strike that the American Flint Glass Workers' Union called in 1900 and 1901, when they undertook to

96 organize us and when part of our factory was burned down. Our trade is practically all over the United States. We ship goods from Maine to California, and from the Gulfs to the Lakes. We have very little local trade, hardly any at all in Wellsburg, and not much in Wheeling. There may be some little

trade out through the state of West Virginia, but in general our trade runs to the eastern and western states. The reason for that is that the gas and electric globes are used very little in the southern states, oil lamps being still used there; the bulk of our business being in the eastern states, where electricity is generally used, and in the western and northern states, where both gas and electricity are largely used.

My information is that the effort to unionize us at this time arises out of complaints which have been made to the union by manufacturers, presumably union manufacturers who are members of the Associated Manufacturers, who deal with the American Flint Glass Workers' Union, and have a joint scale or price list of wages; that our company sells its goods at too low a price, and out of the fact that the union on its part desires to compel all of the manufacturers of glass ware to come under its rules, to increase the membership of their union, and thereby to increase the amount of money for the union to handle and to increase the union's power.

JAMES PAULL,

(Two originals executed.)

Taken, subscribed and sworn to before me this 9th day of July, 1913.

[NOTARIAL SEAL.]

HERMAN A. HUNDT,

Notary Public in, for, and of Ohio County, West Virginia.

My commission expires Dec. 3d, 1919.

Affidavit of Charles Cusick.

(Filed July 28, 1913.)

STATE OF WEST VIRGINIA,
County of Brooke, To wit:

Chas. Cusick, being by me first duly sworn upon his solemn oath, says:

I reside at Wellsburg, in the county of Brooke, in the state of West Virginia. I am forty-one years of age, and have lived in said county of Brooke most all of my life. I am by occupation a glass worker, and have worked for the Eagle Glass and Manufacturing Company at Wellsburg since said company was organized in 1897 and for its predecessor, in all about nineteen years. I own my own home and another house in the city of Wellsburg, about one block from the plant of the Eagle Glass and Manufacturing Company, said property being worth three thousand dollars. I have a deed of trust on the property to secure a loan from a building association, which I am paying off out of my earnings from the Eagle Glass Company. I am satisfied with my work for said Eagle Glass and Manufacturing Company and desire to continue in the employment of said company. I am now and have for

thirteen years past been earning about four dollars and a half per day at my work for said Glass Company.

About two weeks ago, I was approached by one William Blankensop, also a resident of the city of Wellsburg, W. Va., and by one Joseph Gillooly. I am well acquainted with the said Blankensop, and he introduced the said Gillooly to me, and the said Gillooly said to me, "I guess you know who I am," and I answered, yes, that I had heard of him before. I was cutting weeds around the building of the Free Methodist Church, in said city of Wellsburg, at a point about six blocks from said plant. Said Gillooly thereupon began to talk to me about my employment with the Eagle Glass and Manufacturing Company and began to urge me to become a member of the American Flint Glass Workers' Union. I told him that I was under written contract with the said Eagle Glass and Manufacturing Company not to join this union so long as I was working for said glass company. He said that he knew all about these contracts between the Eagle Glass and Manufacturing Company and its glass workers, and that they did not amount to anything. I replied that it did amount to something to me, that as soon as I went into the union I would have to leave the Eagle. I told him that as soon as I joined the union I would have to quit working for the Eagle, and that by that written contract I had agreed not to join the union while I worked for them. I make the card referred to above, as signed by me, Exhibit No. 1 of this affidavit. It bears date at Wellsburg, W. Va., June 12, 1913. Mr. Gillooly insisted that he knew about these cards and that they amounted to nothing and would not prevent my joining the union.

98 He asked me if I took any oath in connection with the signing of the card, and I answered that I did not, and then he said that the card amounts to nothing. Mr. Gillooly told me that he had not come here for a week, that he had come here to stay until the Eagle Glass Works either became unionized or shut down, and he told me that they were not going to shut down because they were making a great deal of money in their glass department and would not think of shutting down. He said I can give you a job at which you can make six dollars per day all the year through and no shut down in the summer time, and he asked how I would like a job of that kind, and he said we need about six or seven shops to go to Cameron now and that the management was just begging him to send men there to work now. He said that the factory out at Cameron was now in the union; that all the factories said they would not go in, but they came in, and that the Eagle will come in too. He said that if we men, who are glass workers, did not join the union he would take the boys out of the factory and force it to shut down and force us into the union. He said that Thomas Rowe, president of the American Flint Glass Workers' Union, was corresponding with the Eagle Glass Company people and was arranging to have a meeting with them in reference to their unionizing their factory, and that in a short time the Eagle people would unionize the factory. Gillooly told me that he was the regular organizer of the American Flint Glass Workers' Union,

and he told me this when he first met me. I am shown a copy of the American Flint, upon the back of which appears "Official Magazine of the American Flint Glass Workers' Union of North America." The copy shown me is for June, 1913, Vol. 4, No. 8, and on page 3 of that magazine is a picture of four men, underneath the pictures of the men being the language "Our Four Organizers. The men who, by their untiring and exemplary conduct, brought the U. S. strike to a successful ending," and underneath the first picture, beginning on the left hand side, is the name "Edw. Zimmer," under the second picture is the name "Joseph Gillooly," under the third picture is the name "Joseph O'Malley," and under the fourth picture is the name "Robert Luckcock." The man whose picture appears above the name "Joseph Gillooly" is the same Joseph Gillooly who talked to me. I recognize Joseph Gillooly's picture in this magazine to be the picture and counterpart of the man Joseph Gillooly who talked with me. Mr. Gillooly asked me whether I would quit work for the Eagle people if all or

99 nearly all the other glass workers should quit, and I told him that I would have to, that I would not stay in there if all the other men came out, and he said that that was what he wanted. He said he knew I would not stay in if all the others came out. I asked him whether he had asked the other workmen and he said he had talked to some of them. I then asked him what they were going to do, and he said he could not tell me. He said what you say to me I am supposed to keep to myself and I would not say anything about it. I said to him, what do you want me to do? I don't understand what you want me to do. He said I just want you to go ahead and work just the same as you have been doing and use your influence in the favor of the union to help organize the factory. He said I just want you to be willing, if all the other men come out, to come out with them. I said I won't work in there when all the other men come out. He said that is all I want. Speaking of the card, the original of which is filed herewith, Mr. Gillooly said that I would not become a member of the union while I was working here because I could not become a member of the union because there is no local here. I said to him, what will you do with me if they shut down? He said we will pay you six dollars a week, and maybe some of these other factories around here can make room for you and work you in. He didn't put any limit on that six dollars a week, and did not say how long it would be for, and he said that I could take that six dollars a week from them and they would not hinder me from taking outside work at some other kind of work. I told Mr. Gillooly that I had been working for the Eagle people for a very long time and was very well satisfied with my place. I told him that it meant a good deal to me to just decently walk off and leave my job of work. He said I don't want you to leave your job of work; you don't have to do that; that company will go into the union. Gillooly saw me and talked with me twice. The first time up at the church, where I was cutting the weeds, on or about Thursday, June 19, 1913, and the

second time at my home on Monday night following the Thursday when he first talked to me, that is, June 23, 1913. In urging me to join the union and in urging that I would not lose my job, because the factory would be organized. He said that the company could not afford to shut down and that although he knew that they had stated that before they would unionize they would go into the stamping business and go out of the glass business that that was nonsense. He further said that the company had made eighty thousand dollars last year out of their glass department and has lost twenty thousand dollars in their stamping department, and he said, do you suppose they will do away with the department that they made eighty thousand dollars in and take up the department that they lost twenty thousand dollars in; that that would not be reasonable to do that. He said do you think that would be wise or reasonable for them to do that? And I said, no, I don't think it would. He said the books of the Eagle Company will show that they made eighty thousand dollars in the glass department and that they lost twenty thousand dollars in their stamping department. He said I know that to be a fact. As things are now I prefer to work in the Eagle works and would like to have them stay a non-union factory and I do not believe I would make any more money if the factory were unionized. My reason for that is, that I have worked for this company for the last thirteen years since the strike, the factory was non-union before the strike, and always has been non-union, but about thirteen years ago this same union, the American Flint Glass Workers' of America, for the glass workers to agree to join the union, and then when the management refused to unionize the factory the union called out the men on a strike and the factory was closed down. At that time I was working in the packing room. The strike was in June when the men went out and the factory did not resume work again until the fall of that year. When the factory resumed I went to work as a blower. I worked one day and a half of a day and then the union took me out and I joined the union. I took the oath that I would join the union, and I was idle about two weeks, and then went back to work in the packing room. The union allowed me to work in the packing room.

CHAS. CUSICK.

(Two originals executed.)

Taken, sworn to and subscribed before me this second day of July, 1913.

[NOTARIAL SEAL-]

J. A. GIST,

Notary Public in, for, and of Brooke County, West Virginia.

My commission expires July 1, 1919.

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EXHIBIT NO. 1 WITH AFFIDAVIT.

(Filed July 28, 1913.)

(This is the same form of card as Exhibit No. 2 with the bill, except this exhibit is dated "June 12, 1913" and is signed "Chas. Cusick."—Clerk.)

Affidavit of George Goldbrandsen.

(Filed July 28, 1913.)

STATE OF WEST VIRGINIA,

County of Brooke, to-wit:

George Goldbrandsen, being by me first duly sworn upon his solemn oath, says:

I live in the city of Wellsburg, in the county of Brooke, in the state of West Virginia. I am twenty-nine years of age and have lived in the city of Wellsburg about two years. Prior to that time, I lived in Norway, where I learned the trade of glass worker, and worked at that trade during the last twenty-one years. I became a blower when I was sixteen years of age and have worked at that occupation continuously ever since. Since I have been in America I have worked continuously for the Eagle Glass and Manufacturing Company at my trade. I am satisfied with my work and desire to continue working for the Eagle Glass and Manufacturing Company, and want them to run nonunion as they have agreed to do under their written contract with me bearing date June 12, 1913, which I now make Exhibit No. 1 of my affidavit. I have never belonged to any glass workers' union and do not desire to become a member of any glass workers' union, and, particularly, I do not desire to become a member of the American Flint Glass Workers' Union. About four weeks ago I was introduced in the city of Wellsburg to Joseph Gillooly by one Glankensop, and Mr. Gillooly told me that he was the organizer for the American Flint Glass Workers' Union and that he was here to unionize the glass workers in the Eagle glass works. I told him that I did not want to join the union. During the last four weeks Mr. Gillooly approaches me nearly every time I go down town, which is three or four times a week, and nearly talks me to death. I find it very hard to get rid of him.

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During one of these conversations, about a week after June 12, 1913, I told Mr. Gillooly that I had signed the card which is made Exhibit No. 1 of this affidavit, and he said that contract was not worth a damn, and urged me to break it by joining the union. He showed me a little book in which he had the names of what he said were the five best blowers in the Eagle works, including my own name, and he said that if he could get us five to quit working for the Eagle and join the union he would have the best of the workmen and he would then be ahead of the company. He told

me he had lots of money and was going to force the Eagle to recognize the union. He told me that would guarantee me six dollars to six dollars and a half per day if I would quit working for the Eagle; that he would get me work in Brooklyn or in Rochester or in California. I told him I was satisfied with my work and did not want to quit, but he has continued ever since to urge me to break my contract with the Eagle Glass and Manufacturing Company and to join the union. He said that if the glass workers in the Eagle factory did not join the union he would unionize the boys in the factory and they would force us out of work and then we would have to join the union. Mr. Gillooly said that Mr. Baker and Mr. Fillingier and I had better join the union now or the Eagle would shut down some day and then we would find it hard to get a card and hard to get a job. He said it was a shame that we three guys were working for the Eagle and that he would like to have us join the union.

Since June 12, 1913, when I told Mr. Gillooly about the card I had signed, which is made Exhibit No. 1 to my affidavit, and which card Gillooly then told me was not worth a damn, Gillooly has talked to me four or five times, and in those conversations he has urged me to join the American Flint Glass Workers' Union and to also quit working for the Eagle Glass Company. He said that this Eagle Glass Company had given their union a lot of trouble, and that they now were going to try to get them into the union. He said the Eagle is the last factory in their kind of ware that is not in the union and that they were going to make it come into the union.

GEORGE GOLDBRANDSEN.

(Two originals executed.)

103 Taken, sworn to and subscribed before me this second day of June, 1913.
(Notarial Seal.)

A. J. GIST,
*Notary Public in, for and of Brooke
County, West Virginia.*

My commission expires July 1, 1919.

EXHIBIT No. 1 WITH AFFIDAVIT.

(Filed July 28, 1913.)

(This is the same form of card as Exhibit No. 2 with the bill, except this exhibit is dated "June 12, 1913," and is signed "George Goldbrandsen."—Clerk.)

Affidavit of Wm. H. Bayless.

(Filed July 28, 1913.)

STATE OF WEST VIRGINIA,
County of Brooke, to-wit:

Wm. H. Bayless, being by me first duly sworn upon his solemn oath, says:

My name is Wm. H. Bayless, but my name is frequently signed by me simply Wm. Bayless. I live at Wellsburg, and have lived in Wellsburg since 1882. I am forty-one years of age, and my occupation is, at the present time, presser in the glass works of the Eagle Glass and Manufacturing Company, its plant being at Wellsburg, West Virginia. I have worked in different capacities for the Eagle Company during the last thirteen years or thereabouts, and for about ten years last past I have worked as a presser in that company's glass factory. I first started for work for the Eagle Company when the company resumed work after the strike of its glass workers about thirteen years ago. I was not employed by the Eagle company at the time of the strike. I recall, however, that the strike was due to the attempt of the American Flint Glass Workers' Union to bring about the unionizing of the Eagle glass works. At the time of this strike in 1900 or 1901 I was teaming.

About six weeks ago, I was with some other people in the
104 town of Wellsburg, and a man approached me and said that another man would want to talk to me a few minutes as soon as he came back into the room. In a little bit the man entered the room again and said that he wished I would come over and sit down, that he wanted to talk with me. I went with him, and he said that he was an organizer and told me that his name was Joseph Gillooly and that he was an organizer for the American Flint Glass Workers' Union, and that he was in Wellsburg in order to unionize the Eagle glass works. I told him that it was not worth while to talk to me about the union because I did not intend to work in the glass works business more than a year longer, and that then I intended to *leave* a farm and go to farm work or some other work, but that I intended to quit the glass business. He said that he was going to talk to me about the glass works business and the union anyhow, and I said, well, he could go ahead and talk to me if he wanted to, but that it wouldn't do any good, and I told him that I was not going to join the union. He asked me to go out to Lancaster, Ohio, and work for the Hocking Glass Company, which has its glass factory at Lancaster. He told me that he wanted me to take a shop and work on the novelty molds out there. He said that the novelty molds had been sold by the Eagle people to the Hocking people, and that under the agreement the Eagle people were to furnish men to operate the molds; in other words to furnish a shop. He said the Eagle people had promised to send a shop there and that the Eagle had not done it. I said that I didn't know anything about

that part of it, but that I was not going to Lancaster. He wanted to know why, and I said that it would do no good to send a shop there because the men in the Hocking would not work with them because the Hocking were union men. I told him also that the molds were non-union molds and did not contain the union stamp. He said that the stamp could be easily put on out there. He continued to urge me to go to Lancaster, but I declined. I have met Gillooly every few days since that time, about six weeks ago, when he introduced himself to me, and he has continued to talk with me about joining the union, and still trying to get me to go to Lancaster and work for the Hocking company. About two weeks ago, he told me he was going to send me anyhow. I just laughed at him when he said he was going to send me anyhow. He talked to me about the wages I could make out there as *as* compared with the wages I could make here. He told me I could make more out there than with the Eagle. He said that, with the exception of a two weeks' shut down, the Hocking would run continuously, and he said that if I wanted one good year in the glass business before quitting then I should go to Lancaster and work for the Hocking. He said that if he could not get the Eagle men to join the union that he would buy the boys out, and also the small girls. He said that he would have them one way or the other. This last statement he made to me since June 12, 1913, and he has made that statement to me several times since June 12th. He told me the same thing the first time he talked to me, and also said the same thing several times before June 12th.

I am the first man that Gillooly looked up. He came up to Grotz's mold shop the first day he was in town, and he asked Harry Grotz who would be a good fellow to send out to Lancaster, and Grotz told him to get Bayless because he had worked on all the molds. He couldn't find me in town that evening, and he has been two or three times at Mallory's residence for me, and he did not see me until the next day. He also met me the next day in Len. Hall's saloon and made himself acquainted with me, and he asked me to go out there, at Lancaster, Ohio, to work on these molds. I told him there wasn't any use for him to talk to me, because I didn't want to work in the glass business.

Mr. Gillooly talked to me, either the same day or the next day, I think likely it was the next day, after I signed the card, which is shown me and which is filed as Exhibit No. 1 to this affidavit. Gillooly said that those cards that the boys had signed up there at the Eagles glass works were not worth a snap of your finger or didn't amount to a drop in a bucket, and that he didn't care anything about them. He asked me to join the union a number of times since I signed the card, and only a couple of days ago he told me he was going to send me over to Lancaster to work at the Hocking. On Tuesday night of this week, July 1, 1913, I had a talk with Gillooly and he said he was getting along fine in his effort to unionize the Eagle. He said he was going home on the next day, Wednesday, July 2d, to spend the fourth, and then he was going to attend the convention of the American Flint Glass Workers' Union for two

weeks, and that after that was over he was coming back here to Wellsburg, which would be he said two weeks from this 106 coming Monday, and that when he came back he said he was going to be ready then to use his fire crackers. I asked him what kind, and he said dynamite, the kind that makes a loud noise.

I have during the last six weeks seen Gillooly talking with different employes of the Eagle glass works. I know that since June 12th he has talked to men employed by the company and that he sent one of the Eagle men away. Gillooly told me that he had sent Harry Clemens, one of the Eagle employes, away from the Eagle and out to the glass works at Cameron. The Cameron works are union. He sent him away since June 12th. I know that Harry Clemens had signed one of these cards like I signed and I know that Gillooly sent him away to Cameron after Clemens had signed the card.

He told me that the American Flint had plenty of money, more so than they ever had before, to fight a strike, and if they didn't have enough some of the factories would furnish it to them, because the Eagle was the only factory that was making gas and electric globes that didn't belong to the American Flints. He also said that the Macbeth and Evans factories were in the union. He said he was going to leave them run this fire out the same as they had been, but then the next fire they would start up union and also pay the union list. Then he told me that if I wanted to go into the union I wouldn't have to quit up here, that he would wait until he could get them all together and call them out. He said the Eagle people will not quit manufacturing glass and said they will only be out a week or two until we would be back to the same job.

his
WM. H. X BAYLESS.
mark

Witness:

J. A. GIST.

(Two originals executed.)

Taken, subscribed and sworn to before me this third day of July, 1913.

[NOTARIAL SEAL.]

J. A. GIST,
Notary Public in, for and of Brooke
County, West Virginia.

My commission expires July 1, 1919.

EXHIBIT No. 1, WITH AFFIDAVIT.

(Filed July 28, 1913.)

(This is the same form of card as Exhibit No. 2 with the bill, except this exhibit is dated "June 12, 1913," and is signed "Wm. Bayless X his mark."—Clerk.)

Affidavit of William Roth.

(Filed July 28, 1913.)

STATE OF WEST VIRGINIA,
County of Brooke, To wit:

Wm. Roth, being by me first duly sworn upon his solemn oath,
says:

My name is Wm. Roth. I live at Wellsburg, West Virginia; have lived in Wellsburg all my life. My age is twenty-three years, and my occupation is that of a glass blower. I am now employed as a glass blower by the Eagle Glass and Manufacturing Company at Wellsburg and have been so employed by the Eagle Company for the last ten years or thereabouts. When I first started to work I was a carrying-in boy. I am not a member of the American Flint Glass Workers' Union, and never have been. I signed an employment card which is used by the Eagle Glass and Manufacturing Company, and identify the card that is now shown me, dated June 12, 1913, and signed by me by my name, Wm. Roth, as the card I signed in June 12, 1913. I file this card as Exhibit No. 1 to this affidavit. I was not at the meeting the employes in the glass department held with the management of the Eagle company, shortly after the American Flint Glass Workers' organization started their present attempt to unionize the factory, about six weeks ago. I was working night turn that night and did not attend the meeting in the mold shop of the Eagle company, adjoining the glass factory. I was advised of the result of that meeting afterwards and of the action the employes took, and I am satisfied with the result. My understanding of the agreement is that the Eagle company would pay as much for the same class of work as any other factory, and that if there are any things that are not up to the standard it should be reported to Mr. Fisher, the manager, and he has the power to adjust them. Since that meeting, and the men accepting that proposition which was made by Mr. Jas. Paull to the men at the meeting, the men have continued to work in the factory and are so working now. I associate very generally with the men in the factory and I know that they are entirely satisfied with the arrangement that was made, and, so far as I am concerned, I am perfectly satisfied. The Eagle never has run union to my knowledge.

One night, about nine o'clock, about six weeks ago, Elmer Blankensop introduced me to Gillooly and he told me that he was an or-

ganizer for the American Flint Glass Workers' Union, and told me what his business was here, and that he was going to try to unionize the Eagle, and he asked me if I would join the union and continue on working here until he got the men that works here, that is until he got them all, and then he would call them out on a strike. I didn't give him any satisfaction. He said these people, meaning the Eagle, are putting their ware out on the road cheaper than what the union factories can sell it for, and said he wanted to organize this place so it would make us more money and shorter hours, but I didn't give him any satisfaction that night. He said he was in a hurry to see some other fellows, and Blankensop told me that night that he was to take Gillooly around and make him acquainted with some of the men that works in the Eagle. He said he would see me some time again. The next time I was down the street, I don't know exactly what night it was, but Gillooly and Blankensop stopped me that night and wanted me to join the union. Gillooly said he was doing good work here at the Eagle, but he said he would not tell if he got a man here to join the union; he wouldn't tell one another who they were until he got them all, and then he said when we get them all the men will go to the office, tell them they either have to run the factory union or they won't work, but I didn't give him any satisfaction that night. I didn't tell him I would join the union or I wouldn't. He wanted to know where I lived and I told him. He said he would come out some night and talk to me. So one evening he came out to the house and stayed for a couple of hours, I suppose; wanted me to sign up; that no one would ever find it out. He said there is no danger of losing your job, and he said he would send my name into the headquarters of the union and any time I wanted to leave here they would get me a job. I told him

109 that night that I wouldn't sign anything at all, and I said I may be the only one that will sign it. I told him I didn't know whether he had anybody else or not there, and that I would not do it. He said if he was not doing business here the union would not hold him here, and he said he had talked to twenty-five of the Eagle men since he had been here, and he had gotten seventeen of them, so I told him that night that I would not join the union. He said, what would you do if the rest of the men would walk out, be long to the union, and leave you back? and I said I would go too. I told him that night I would not join the union. He wanted to see me down street and give me a union list to show me how much under the list we were working for up here. I didn't see him that night. A night or two after that I saw him; he walked up alongside of me and shoved the union list down into my coat pocket, and told me to take it home and look at it. And then he came to the house once after that and wanted me to go to Cameron and go to work there. He said he would give me a union card and go over with me and I told him I wouldn't go. He said he had a telephone message from Mr. Frank, manager of the Cameron factory, and wanted me to come out there and blow lantern globes. He said there were two gathering boys that would gather for me if I would take the job, and I asked him who they were, and he told me he would tell me

after he gave me the union card. He said he was almost sure that I would go and told those people out there that I would be there; but he said he would go down and telephone back and tell them I would not come, and then he said he would see me some time again. This last conversation was at a later date than the day when he visited at my house the second time.

At the time he was at my house the second time, I told him about signing the employment card, which I refer to as Exhibit No. 1 of my affidavit. He asked me if all the men had signed the employment card, and I told him that they did and that I did. He just laughed and said that that was all right. He said that a man would be a fool if he didn't sign the card and he said he wouldn't lose his job. He said the U. S. Glass Company had tried to work the same thing on the men there. He said you did right by signing the card. He said if you don't want to work here we will send you away from here. He said also that I could take out a union card and continue

110 working here in the Eagle until he got the rest of the men and then he would call them out, and he said if you don't want to stay here in the Eagle and work I will get you a job at a union factory. He said that if he didn't get enough men here this time that our names would be on the daily record in the headquarters, and the next time he came around, if we were still working here, he wouldn't have to bother us to get us out. He asked me if there were any men in here that I felt safe to talk to about the union; also asked me to give him a list of the names of the men that work here that I thought would join the union.

He said that he had heard that Mr. Jas. Paull had said that he would close the factory down before he would run it union, and he said let them close it down, and he said that is what we want. He said the Eagle would be better closed down than running the way it is here now. He told me that the Eagle was putting out wares so cheap that the union factories could not compete with it. He said that if they could shut down the Eagle it would be better for the union factories.

The last talk Gillooly had with me was on Tuesday of this week. He asked me again to join the union, and said he would say nothing about it, and asked me to take out a union card and continue to work in the Eagle factory until the balance of the men were called out, and then come out, or if I was not willing to do that, then to take a union card and go to Cameron, and I refused to take a union card and continue working at the Eagle, and I also refused to take a union card and go to work at Cameron. I have not seen Gillooly since this last conversation, which took place on Tuesday of this week.

Gillooly told me that he was going away to attend the convention of the American Flint Glass Workers' Union and that he was coming back after the convention was over. He said that he was coming back if he was re-elected. He said he was pretty sure he would be re-elected and that he would be back.

WILLIAM ROTH.

(Two originals executed.)

Taken, subscribed and sworn to before me this third day of July, 1913.

[NOTARIAL SEAL.]

J. A. GIST,
Notary Public in, for, and of Brooke
County, West Virginia.

My commission expires July 1, 1919.

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EXHIBIT No. 1 WITH AFFIDAVIT.

(Filed July 28, 1913.)

(This is the same form of card as Exhibit No. 2 with the bill, except this exhibit is dated "June 12, 1913," and is signed "Wm. Roth."—Clerk.)

Affidavit of Charles B. Ott.

(Filed July 28, 1913.)

UNITED STATES OF AMERICA,

Northern District of West Virginia, ss:

Charles B. Ott, being first duly sworn, upon his solemn oath says:

My name is Charles B. Ott; my residence, Wheeling, West Virginia; my age, fifty years; and my occupation, vice-president of the Eagle Glass and Manufacturing Company, a West Virginia corporation, having its principal office and its works in the Northern District of West Virginia. I am the same Charles B. Ott whose affidavit, bearing date July 9th, 1913, is filed with a bill this day filed in the District Court of the United States for the Northern District of West Virginia, at Philippi, in the equity cause of Eagle Glass and Manufacturing Company against Thomas W. Rowe et al.

In addition to reaffirming the said affidavit and the allegations particularly there made with reference to the imminence of the injury which in the bill it is said may come upon the Eagle Glass and Manufacturing Company unless the restraining order and injunction asked for by the bill in that case be awarded by the District Court of the United States for the Northern District of West Virginia as aforesaid, I aver, upon information and belief, that Joseph Gillooly, whose name is mentioned in said bill, returned to Wellsburg on Friday, July 25th, 1913, to the same rooming place he had prior to leaving Wellsburg for the fourth of July and in order to attend the convention of the American Flint Glass Workers' Union, which convention was held beginning on July 7th and ending July 19th, 1913, and that said return to Wellsburg is in pursuance of his previous declared intention to return following the holding of that convention.

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I further say, upon information and belief, that said Joseph Gillooly stated, and upon information and belief I affirm it to be true, that he, Joseph Gillooly, following his return as

resaid, contemplates pulling the men at the Eagle Glass and Manufacturing Company, and upon information and belief I say that by word "pull," used in the connection in which Gillooly has used means calling out on strike the men employed at the glass works of the Eagle Glass and Manufacturing Company.

In support of this affidavit I attach and make part of the affidavit marked "Gillooly Letter Exhibit No. 1," a letter written upon the letterhead of the American Flint Glass Workers' Union, upon which appears the names "T. W. Rowe, president; Wm. J. Croke, vice-president; Wm. P. Clarke, secretary-treasurer; D. J. McGrail, assistant secretary; Joseph Gillooly, organizer," which letterhead contains the further words, "Affiliated to The American Federation of Labor." The letter bears date "Columbus, O., July 22, 1913," and is addressed to "Mr. Louis E. Yeager," and is signed "Joe Gillooly, Columbus, Ohio c/o New Davidson Hotel."

Louis E. Yeager is an employe of the Eagle Glass and Manufacturing Company glass works, and has signed one of the employment cards mentioned in the bill in this case, his signature to that card being of a date prior to July 22, 1913. Said Yeager is now working with the Eagle Glass and Manufacturing Company under the contract set forth in said card.

Gillooly was in Columbus, Ohio, at that time, July 22, 1913, going to the men at the Federal Glass Company at Columbus, Ohio, having been called out by the representatives of the American Flint Glass Workers' Union in an attempt to compel that company to unionize, as affiant is informed and believes. Affiant is informed and believes and upon information and belief says that the Federal Glass Company has been operating its works non-union.

CHARLES BOTT.

Taken, subscribed and sworn to before me this 28th day of July, 1913.

[COURT SEAL.]

I. V. G. MORRIS,

Deputy Clerk, D. C. U. S., N. D. W. Va.

(2 originals executed.)

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GILLOOLY LETTER, EXHIBIT No. 1.

(Filed July 28, 1913.)

American Flint Glass Workers' Union.

N. H. of A. F. G. W. U. of North America.

Organized July 1st, 1878.

(Emblems.)

T. W. Rowe, President; Wm. J. Croke, Vice-President; Wm. P. Clarke, Sec'y-Treas.; D. J. McGrail, Ass't Sec'y; Joseph Gillooly, Organizer.

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Rooms 928-929-930-931-932 Ohio Building, Madison Avenue and Superior Street.

Bell Phone, Main 636; Home Phone, 6716.

(Union Label.)

Affiliated to The American Federation of Labor.

COLUMBUS, O., July 22, 1913.

Mr. Louis E. Yeager.

DEAR SIR & FRIEND: Just a few lines to let you know that I have not forgotten you and also to let you know that We have the men employed at the Federal Glass Co. in this City Organized and out on Strike and Mr. Badey has told the men just what Mr. Paul has told the men in Wellsburg W. Va. that if they went on strike he would close his plant down But he is not going to do it as the Company has agreed to meet Pres. Rowe and talk the matter over and we expect to settle this week, and just as soon as we do I will come to Wellsburg W. Va. and pull the men at the Eagle Glass Co. I know that the men employed at the Eagle Glass Co. are just as anxious to be organized and get the same conditions as these men here and I know too that the men employed at the Eagle will be just as loyal and determined as any Body of men that I have ever had charge of. I worked this movement up in two weeks there is two Hundred and Seventy Five men here out on Strike and they are going to stand united until they get Union conditions and recognition of the Union, just as soon as the Company here settles up I will be Back in your city to see the men and I hope that it will be the sense of the men to force the Eagle Glass Co. to operate their factory Union and that the men employed will stand united for a just and righteous cause in the up lifting of his fellow worker. Kindly remember me to all the Boys and tell them that just as soon as the strike here is settled I will be Back in Wellsburg, W. Va., to see them. Trusting to hear from you soon and wishing you and family success I remain as Ever Your Friend,

JOE GILLOOLY,
Columbus, Ohio.

c/o New Davidson Hotel.

(Envelope.)

The N. D. H.
The New Davidson Hotel.
Maurice E. Langan, Manager,
One Half Block from
Union Depot,
Columbus, Ohio.

Columbus, Ohio,
Jul- 22,
4-P. M. Stamp.
1913.

Mr. Louis E. Yeager,
105 24th St.,
Wellsburg,
W. Va.

Temporary Restraining Order.

At a District Court of the United States for the Northern District of West Virginia, continued and held at Philippi, in said district, on the 28th day of July, 1913, the following order was made and entered of record, to-wit:

In Equity.

EAGLE GLASS AND MANUFACTURING COMPANY, a Corporation Organized under and by Virtue of the Laws of the State of West Virginia, a Citizen of said State, Having its Principal Office at Wellsburg, in said State and District, Plaintiff,

vs.

THOMAS W. ROWE, of Toledo, Ohio, a Citizen of the State of Ohio, Individually and as President of the American Flint Glass Workers' Union; William J. Croke, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of the American Flint Glass Workers' Union; William P. Clarke, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-treasurer of the American Flint Glass Workers' Union; D. J. McGrail, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually and as Assistant Secretary of the American Flint Glass Workers' Union; Joseph Gillooly, of Bridgeport, Ohio, and a Citizen of the State of Ohio, Individually and as a Member of the Executive Board of the American Flint Glass Workers' Union, and as One of the Organizers of the American Flint Glass Workers' Union, Defendants.

On this 28th day of July, 1913, Eagle Glass and Manufacturing Company, a corporation organized under and by virtue of the laws of the state of West Virginia, and citizen of said state, having its principal office at Wellsburg, in said state and district, the plaintiff in the above entitled suit in equity, by George R. E. Gilchrist, of its counsel, presented to the court its bills of complaint and eight exhibits duly verified by the affidavit of H. W. Paull, president of said Eagle Glass Manufacturing Company, and alleging in effect, among other things, that the said defendants are conspiring together to unionize plaintiff's glass factory without plaintiff's consent and against plaintiff's will, and in so doing and in trying to effectuate said unlawful object the said defendants are about to cause a large number of plaintiff's employees to cease working for plaintiff, contrary to the terms of their employment by the plaintiff and in violation of their contract of service with plaintiff; are resorting to the usual expedients of compelling or inducing, by threats, force, intimidation, violence, violent or abusive language, or persuasion, plaintiff's employees to leave its service, also contrary to the terms of their employment by plaintiff, and in violation of their contractual obligations with plaintiff, and threaten to close down plaintiff's glass factory and not permit plaintiff to operate its glass factory

until such time as plaintiff shall agree to unionize its glass factory and employ none but union labor who are members of the American Flint Glass Workers' Union; and also alleging in effect that unless this court shall grant an immediate restraining order preventing said defendants, and each and every of them, their committees, agents, servants, confederates and associates, from doing the said things complained of in said bill of complaint and purposes as set forth therein, and especially the enforced shutting down of plaintiff's glass factory and enforced idleness, unless and until plaintiff shall accede to the demands of said defendants, unionize its glass factory and employ only union labor, members of said American Flint Glass Workers' Union, irreparable injury and damage will be suffered by plaintiff; and said plaintiff thereupon presented and filed with its said bill, in support thereof, the affidavits of Charles B. Ott, H. W. Paull, James Paull, Charles Cusick, George Goldbrandsen, William H. Bayless and William Roth, and the second affidavit of Chas. B. Ott, with the letter exhibited therewith, dated as of this day.

Upon consideration whereof, the said bill of complaint, its eight exhibits and the said seven affidavits are ordered to be filed and process is ordered to be issued on said bill, and it clearly appearing to the court from specific facts shown by affidavits and by the verified bill that immediate and irreparable loss or damage will result to the applicant before the matter can be heard on notice, and that

117 without notice a temporary restraining order should be allowed as prayed for in said bill of complaint, it is therefore adjudged, ordered and decreed by the court that said defendants, and each and every of them, their committees, agents, servants, confederates and associates, be restrained and strictly enjoined from interfering and from combining, conspiring or attempting to interfere with the employees of the plaintiff for the purpose of unionizing plaintiff's glass factory, without plaintiff's consent, by representing or causing to be represented in express or implied terms, to any of plaintiff's employees, or to any person who might become an employee of plaintiff, that such person will suffer or is likely to suffer some loss or trouble in continuing in or in entering the employment of plaintiff, assigning, representing or causing to be represented in express or implied terms to such employee or employees that such loss or trouble will or may come by reason of plaintiff not recognizing the American Flint Glass Workers' Union, or because plaintiff runs a non-union glass factory.

From interfering and from combining, conspiring or attempting to interfere with employees of plaintiff for the purpose of unionizing plaintiff's glass factory, without plaintiff's consent, and in aid of such purpose knowingly and wilfully bringing about in any manner the breaking by plaintiff's employees of contracts of service known to them at the time to exist, which plaintiff now has with its employees, and from knowingly and wilfully bringing about in any manner the breaking by plaintiff's employees of contracts of service which may hereafter be entered into by persons with plaintiff and be known to them while the relationship of employer and employee, as

such employee so brought to break his contract, exists, and especially from knowingly and wilfully enticing plaintiff's employees, present or future, knowing of such relationship, while the relationship of employer and employee, as to such employee so enticed, exists, to leave plaintiff's service, giving or assigning directly or indirectly as a reason for any such act so brought about, or enticement and leaving of plaintiff's service, that plaintiff does not recognize the American Flint Glass Workers' Union, or that plaintiff runs a non-union glass factory, or that the interest of the American Flint Glass Workers' Union requires that plaintiff shall not be permitted to run a non-union glass factory, or that the interest of the union will be best promoted thereby.

18 From interfering and from combining, conspiring or attempting to interfere with the employees of plaintiff so as knowingly and wilfully to bring about in any manner the breaking by plaintiff's employees of contracts of service, known to them at the time to exist, which plaintiff now has with its employees, and from knowingly and wilfully bringing about in any manner the breaking by plaintiff's employees of contracts of service which may hereafter be entered into by persons with plaintiff, and be known to them, while the relationship of employer and employee, as to such employee so brought to break his contract, exists, and specially from knowingly and wilfully enticing plaintiff's employees, present or future, knowing of such relationship, while the relationship of employer and employee, as to such employee so enticed, exists, to leave plaintiff's service, without plaintiff's consent, against plaintiff's will, and to plaintiff's injury.

From interfering with, hindering or obstructing any or the business of plaintiff, or its agents, servants or employees, in the discharge of their duties as such, at and about plaintiff's glass factory, or elsewhere, by trespassing on or entering upon the grounds and premises of plaintiff, or within its glass factory, for the purpose of interfering therewith, or hindering or obstructing its business in any manner whatsoever or with the purpose of compelling or inducing, by threats, force, intimidation, violence, violent or abusive language, or persuasion, any of the employees of plaintiff to refuse or fail to perform their duties as such employees.

From compelling or inducing or attempting to compel or induce by threats, intimidation, force, or violence, or abusive or violent language, any of the employees of plaintiff to leave its service or fail or refuse to perform their duties as such employees, or to compel or attempt to compel by threats, intimidation, force, violent or abusive language, any person desiring to seek employment in or about plaintiff's glass factory and works from so accepting employment therein.

From entering upon or establishing a picket or pickets of men on or patrolling railroad or street cars passing through, near or adjacent to the plaintiff's property for the purpose of inducing or compelling by threats, intimidation, violence, violent or abusive language, or persuasion, any employee of plaintiff to fail or refuse to perform his duties as such, or for the purpose of interviewing or talking to any person or persons on said railroad or street cars coming to or near plaintiff's glass factory to accept

employment with plaintiff, for the purpose and with the intention of inducing or compelling them, by threats, violence, intimidation, violent or abusive language, persuasion, or in any other manner whatsoever, to refuse or fail to accept service with plaintiff.

From compelling or inducing or attempting to compel or induce by threats, force, intimidation, or violent or abusive language, any employee of plaintiff to refuse or fail to perform his duties as such employee, and from compelling or attempting to compel or induce, by threats, intimidation, force, or violence, or abusive or violent language, any such employee to leave the service of plaintiff, and, by like methods, to prevent or attempt to prevent any person desiring to accept employment with plaintiff in or about its glass factory or works or elsewhere, from doing so by threats, violence, intimidation, or violent or abusive language.

From interfering in any manner whatsoever, either by threats, violence, intimidation, persuasion or entreaty with any person in the employ of plaintiff who has contracted with and is in the actual service of plaintiff to entice or induce him to quit the service of plaintiff or to fail or refuse to perform his duties under his contract of employment, and from ordering, aiding, directing, assisting, or abetting in any manner whatsoever any person or persons to commit any or either of the acts aforesaid.

From congregating at or near the premises of plaintiff, and from picketing or patrolling said premises for the purpose of intimidating plaintiff's employees or coercing them by threats, intimidation, violence, abusive or violent language, or preventing them, in the manner aforesaid, from rendering their service to plaintiff, and, in like manner, from inducing or coercing them to leave the employment of plaintiff, and from in any manner so interfering with the plaintiff in carrying on its business in its usual and ordinary way, and from interfering by threats, intimidation, violence, violent or abusive language with any person or persons who may be employed or seeking employment by plaintiff in the operation of plaintiff's glass factory and works.

From, either singly or in combination with others, collecting in and about the approaches to plaintiff's glass factory and
120 works, for the purpose of picketing or patrolling or guarding the streets and approaches to the property of plaintiff for the purpose of intimidating, threatening or coercing any of plaintiff's employees from work in its said glass factory or works, or any person seeking employment therein, from entering into such employment, and from so interfering with said employees in going to and from their daily work in and about the glass factory and works of plaintiff.

And from, either singly or collectively, going to the homes or boarding houses of plaintiff's employees, or any of them, for the purpose of intimidating or coercing any or all of them to leave plaintiff's employment.

The motion for an injunction in this suit is set down for hearing in the United States Court room at Clarksburg, on the 6th day of August, 1913, at 11 o'clock A. M.

This restraining order is not to take effect until said plaintiff, or the responsible person for it, shall enter into a bond in the penal sum of two thousand dollars, with surety therein satisfactory to the clerk of this court, conditioned that said plaintiff shall pay all such costs and damages as are sustained by the defendants, or any of them, on account of this restraining order should it be hereafter dissolved. Service of a copy of this order on the defendants, their committees, agents, servants, confederates and associates, or any of them, shall be deemed and held sufficient notice of this order. And thereupon the plaintiff tendered its bond above required in the penalty of two thousand dollars, with Chas. B. Ott as surety, and such bond, approved by the clerk and this court, is ordered filed.

Bond on Restraining Order.

(Filed July 28, 1913.)

Know all men by these presents: that we, Eagle Glass and Manufacturing Company, a West Virginia corporation having its principal office in Wellsburg, West Virginia, principal, and Chas. B. Ott, of Wheeling, West Virginia, surety, are held and firmly bound unto the United States of America, in the penal sum of two thousand dollars, to the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 28th day of July, 1913.

The condition of the above obligation is such, that, whereas, Eagle Glass and Manufacturing Company, has obtained from the judge of the District Court of the United States for the Northern District of West Virginia, in the equity suit of Eagle Glass and Manufacturing Company, a corporation, etc., v. Thomas W. Rowe and others, this day instituted in said court, a temporary restraining order, restraining the said Thomas W. Rowe and others, defendants, from doing the acts and things in said order set forth.

Now, if the above bounden Eagle Glass and Manufacturing Company shall well and truly pay *and also* all such costs, fees and damages as may be awarded against it in case said injunction is dissolved, then this obligation to be void, otherwise to remain in full force and virtue.

[CORPORATE SEAL.]

EAGLE GLASS & MFG. CO.,
By H. W. PAULL, *Pres't.*
CHAS. B. OTT. [SEAL.]

Approved this July 28th, 1913.

C. B. KEFAUVER, *Clerk.*

Subpoena in Chancery.

UNITED STATES OF AMERICA,
Northern District of West Virginia, ss:

The President of the United States of America to the Marshall of the
 Northern District of West Virginia, Greeting:

You are commanded to summon Thomas W. Rowe, of Toledo, Ohio, and a citizen of the state of Ohio, individually, and as president of the American Flint Glass Workers' Union; William J. Croke, of Toledo, Ohio, and a citizen of the state of Ohio, individually, and as vice-president of the American Flint Glass Workers' Union; William P. Clarke, of Toledo, Ohio, and a citizen of the state of Ohio, individually, and as secretary-treasurer of the American Flint Glass Workers' Union; D. J. McGrail, of Toledo, Ohio, and a citizen of the state of Ohio, individually, and as assistant secretary of the American Flint Glass Workers' Union; and Joseph Gillooly, of Bridgeport, Ohio, and a citizen of the state of Ohio, individually, and as a member of the executive board of the American Flint Glass Workers' Union, and as one of the organizers of the American Flint Glass Workers' Union, if they be found in your district, to be and appear in the District Court of the United States, for the Northern District of West Virginia, aforesaid, in the clerk's office of said court, at Philippi, on the 18th day of August, 1913, to answer a certain bill in equity, now filed and exhibited in said court against them by Eagle Glass and Manufacturing Company, a corporation organized under and by virtue of the laws of the state of West Virginia, and citizen of said state, having its principal office at Wellsburg, in said state and district. Hereof you are not to fail under the penalty of the law thence ensuing. And have then and there this writ.

Witness, the Honorable Alston G. Dayton, judge of the District Court of the United States for the Northern District of West Virginia, this 28th day of July, A. D. 1913, and in the 138th year of the independence of the United States of America.

Attest:

C. B. KEFAUVER, *Clerk*. [SEAL.]

Memorandum.

The said defendants are required to file their answer or other defense in this suit in the clerk's office of said court on or before the twentieth day after service, excluding the *day* thereof; otherwise the bill may be taken pro confesso.

C. B. KEFAUVER, *Clerk*.

(Return Endorsed.)

I hereby certify and return that, on the 29th day of July, 1913, at Wellsburg, Brooke county, West Virginia, I personally served

within writ upon Joseph Gillooly, by delivering on that day a duly certified copy to him and at the same time exhibiting to him the original thereof; and also at the same time and place I personally served same upon Joseph Gillooly, a member of the executive board of the American Flint Glass Workers' Union, by delivering to him a duly certified copy thereof, and at the same time exhibiting to him the original thereof; also at the same time and place I personally served same upon Joseph Gillooly, an acknowledged organizer of the American Flint Glass Workers' Union, by delivering to him on that day a duly certified copy thereof and at the same time exhibiting to him the *exhibiting to him the* original thereof.

3 Thomas W. Rowe, William J. Croke, William P. Clarke and D. J. McGrail not found in my district.

JAMES E. DOYLE,

U. S. Marshal, N. D. W. A.,

By HAL M. RAPP,

Office Deputy U. S. Marshal, N. D. West Va.

Return on Restraining Order.

I hereby certify and return that on the 29th day of July, 1913, at Wellsburg, Brooke county, West Virginia, I personally served the within writ upon Joseph Gillooly, by delivering on that day, a duly certified copy, to him, and at the same time and place exhibiting to him the original thereof; also at the same time and place I personally served the same upon Joseph Gillooly, a member of the executive board of the American Flint Glass Workers' Union, by delivering to him a duly certified copy thereof and at the same time exhibiting to him the original thereof; also at the time and place, I personally served the same upon Joseph Gillooly, an acknowledged organizer of the American Flint Glass Workers' Union, by delivering to him a duly certified copy thereof and at the same time exhibiting to him the original thereof.

Thomas W. Rowe, William J. Croke, William P. Clarke and D. J. McGrail not found in my district.

JAMES E. DOYLE,

United States Marshal, N. D. W. Va.,

By HAL M. RAPP,

Office Deputy, U. S. Marshal, N. D., West Va.

Order Filing Answer, etc., Gillooly.

And at another day, to-wit: On the 6th day of August, 1913, the following order was made and entered of record, to-wit:

In Equity. No. 77.

EAGLE GLASS AND MANUFACTURING COMPANY, Plaintiff,
vs.
THOMAS W. ROWE et al., Defendants.

This cause came on to be heard at this term, the plaintiff by counsel appeared and asked leave to proceed with its application for a preliminary injunction, it appearing that the defendant, Joseph Gillooly, had been duly served with a copy of the restraining order entered herein on the twenty-eighth day of July, 1913, and had also been duly served with the process of subpoena issued herein on the twenty-eighth day of July, 1913, upon the filing of plaintiff's bill.

Thereupon the defendant, Joseph Gillooly, appeared in open court and by his counsel, John A. Howard, filed his separate answer to the bill, wherein he set up that he is not a citizen of the state of Ohio, but is a citizen of the state of West Virginia, and that he resides in Grafton, in Taylor county, said state, and then moved to dissolve the said restraining order and to dismiss plaintiff's suit, and in support thereof filed the affidavits of Joseph Gillooly, O. A. Heffner, Richard Means, Lee Bennett and A. S. Warder.

And it appearing to the court that no notice had been given to plaintiff's counsel of the claim that the defendant, Joseph Gillooly, is a resident of the state of West Virginia until the filing of said answer and that no notice had been given to plaintiff's counsel of the intention to make said motion to dissolve said restraining order and to dismiss plaintiff's bill, and plaintiff desiring to be given time within which to examine into the truth of the claim of said defendant, Joseph Gillooly, that he is a resident of the state of West Virginia first made in the answer filed this day as aforesaid, thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, viz.: plaintiff is given five days, which by agreement of counsel and court was extended for mutual convenience to seven days, and a hearing upon the issues presented by said answer and said motions of said defendant and a hearing of plaintiff's motion for said preliminary injunction which is set down for Wednesday, August 13, 1913, at 11 o'clock A. M., at Clarksburg, and the restraining order heretofore granted is continued in full force and effect until said day and the further order of this court.

Answer of Joseph Gillooly.

(Filed Aug. 6, 1913.)

the District Court of the United States for the Northern District of West Virginia.

In Chancery.

EAGLE GLASS & MANUFACTURING COMPANY, a Corporation Organized under and by Virtue of the Laws of the State of West Virginia, and a Citizen of said State, Having its Principal Office at Wellsburg, in said State and District, Plaintiff,

vs.

THOMAS W. ROWE, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually, and as President of the American Flint Glass Workers' Union; William J. Croke, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually, and as Vice-President of the American Flint Glass Workers' Union; William P. Clarke, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually, and as Secretary-Treasurer of the American Flint Glass Workers' Union; D. J. McGrail, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually, and as Assistant Secretary of the American Flint Glass Workers' Union; and Joseph Gillooly, of Bridgeport, Ohio, a Citizen of the State of Ohio, Individually, and as a Member of the Executive Board of the American Flint Glass Workers' Union and One of the Organizers of the American Flint Glass Workers' Union, Defendants.

Separate Answer of Joseph Gillooly.

To the Honorable Judge of the District Court for the Northern District of West Virginia:

This respondent for answer to the bill of complaint filed against him and others in the above styled suit says:

126 First. It is true as alleged in the said bill of complaint as your respondent is informed and believes that the complainant, the Eagle Glass & Manufacturing Company is a corporation organized under and by virtue of the laws of the State of West Virginia, having its principal office at Wellsburg, in Brooke county, in the state of West Virginia, and is a resident and citizen of the state of West Virginia.

Second. It is not true as alleged in the bill of complaint that this respondent is a resident in and citizen of the state of Ohio, on the contrary the fact is that this respondent is now and has been continuously since he arrived at the age of twenty-one years, which was about eleven years ago, a resident in and citizen of the city of Grafton in the county of Taylor and state of West Virginia.

This respondent further says he is now about thirty-two years of

age, that when he was about twenty-one years of age he was married at Clarksburg, Harrison county, West Virginia, and immediately took up his residence with his wife in the city of Grafton, Taylor county, West Virginia. That his family at present consists of himself, his wife and three children, and that during all of the time since he was married he has lived in the said city of Grafton, county of Taylor, and State of West Virginia, that during the past five years he has lived in his present residence at Number 710 Ona street, in the city of Grafton, county of Taylor, and State of West Virginia. Affiant further says that he has never claimed or exercised rights of citizenships in any other state than that of West Virginia, that his first vote as a citizen and every other vote he has cast during all of his life was cast at the various municipal, state and national elections in the city of Grafton, county of Taylor, and state of West Virginia.

Third. This respondent being advised that the complainant and this respondent being both residents of the state of West Virginia, this court is without jurisdiction in this suit and that therefore this respondent is not required to answer (at this time at least) to the other averments in the bill. This respondent therefore asks that the restraining order heretofore granted be dissolved and the suit dismissed.

JOSEPH GILLOOLY,
By JOHN A. HOWARD,
His Solicitor.

127

Affidavit of Joseph Gillooly.

(Filed Aug. 6, 1913.)

In the District Court of the United States for the Northern District of West Virginia.

EAGLE GLASS & MANUFACTURING COMPANY, etc.,
vs.

THOMAS W. ROWE et al.

Affidavit of Joseph Gillooly.

STATE OF WEST VIRGINIA,
County of Taylor, To wit:

This day personally appeared before me the undersigned notary public, Joseph Gillooly, who being first duly sworn says upon his oath, that he is one of the defendants in the above styled cause; it is not true as alleged in the bill of complaint that he is a citizen and resident of the state of Ohio; he is at the present time a citizen and resident of the state of West Virginia; with his wife and three children resides in a house which he owns at No. 710 Ona street, in the city of Grafton, county of Taylor, and state of West Virginia; he was married at Clarksburg, West Virginia, ten years ago and has resided continuously since then at Grafton, West Virginia; he was

a resident of Grafton, West Virginia when he arrived at the age of twenty-one years and cast his first vote as a citizen of West Virginia at a general Congressional election in which Honorable Alston Gordon Dayton and Honorable John T. McGraw were opposing candidates; he has voted at every municipal state and national election at Grafton, Taylor county, West Virginia, since then, a period of about ten years, and has never voted, claimed or exercised right of citizenship in any other state or at any other place; he has not resided at any other place than Grafton, Taylor county, West Virginia since he was twenty-one years of age, and he is now thirty-two years of age; he did reside at Bridgeport, in the state of Ohio, with his parents when he was a boy under the age of twenty-one years and before he was married, but he left the state of Ohio before he was twenty-one years old, eleven years ago, and has not resided there since then and never was a citizen of the state of Ohio.

128 Affiant further says that he has during a period of ten years been a tax payer of the county of Taylor and state of West Virginia, that certain of the receipts he received for taxes paid are attached hereto and marked a "Exhibit A" of affidavit of Joseph Gillooly are submitted as further evidence of the fact that he is a resident and citizen of West Virginia.

And further affiant sayeth not.

JOSEPH GILLOOLY.

Taken, sworn to and subscribed before me this 5th day of August, 1913.

HOWARD FLEMING,
Notary Public.

My commission expires Dec. 17, 1919.

EXHIBIT A, WITH GILLOOLY'S AFFIDAVIT.

(The originals of these sundry tax receipts are transmitted to the United States Circuit Court of Appeals.—Clerk.)

Affidavit of O. A. Heffner.

(Filed Aug. 6, 1913.)

In the District Court of the United States for the Northern District of West Virginia.

EAGLE GLASS & MANUFACTURING COMPANY, etc.,

vs.

THOMAS ROWE et al.

Affidavit of O. A. Heffner.

STATE OF WEST VIRGINIA,

County of Taylor, To wit:

This day personally appeared before the undersigned notary public, O. A. Heffner, who being first duly sworn says upon his oath

that he was the sheriff of the county of Taylor, in the State of West Virginia, during the term of four years from 1908 to 1912; that he knows Joseph Gillooly one of the defendants in the above styled cause; that said Joseph Gillooly was *was* during the whole of said term of affiant's office a resident in and citizen of the county of Taylor, in the State of West Virginia.

And further affiant sayeth not.

O. A. HEFFNER.

Taken, sworn to and subscribed before me this 5th day of August 1913.

HOWARD FLEMING,
Notary Public.

My commission expires Dec. 17, 1919.

Affidavit of A. E. N. Means.

(Filed Aug. 6, 1913.)

In the District Court of the United States for the Northern District of West Virginia.

EAGLE GLASS & MANUFACTURING COMPANY, etc.,

vs.

THOMAS ROWE et al.

Affidavit of Richard Means.

STATE OF WEST VIRGINIA,
County of Taylor, To wit:

This day personally appeared before the undersigned notary public, A. E. N. Means, who being first duly sworn says upon his oath that he was the sheriff of Taylor county, West Virginia, during the term from 1904 to 1908; that he knows Joseph Gillooly, one of the defendants in the above styled cause, and the said Joseph Gillooly was during the said term of affiant's office a resident in and a citizen of the county of Taylor and state of West Virginia; affiant further says that the said Joseph Gillooly has been during all of the time since then, and is now, a resident in and a citizen of the county of Taylor and state of West Virginia.

Further affiant sayeth not.

A. E. N. MEANS.

Taken, sworn to and subscribed before me this 5th day of August 1913.

BENJ. F. BAILEY,
Notary Public.

My commission expires Feby. 15th, 1920.

130

Affidavit of Lee Bennett.

(Filed Aug. 6, 1913.)

In the District Court of the United States for the Northern District
of West Virginia.

EAGLE GLASS & MANUFACTURING COMPANY, etc.,

vs.

THOMAS W. ROWE et al.

Affidavit of Lee Bennett.

STATE OF WEST VIRGINIA,

County of Taylor, To wit:

This day personally appeared before the undersigned notary public, Lee Bennett, who being first duly sworn says upon his oath that he is at the present time sheriff of the county of Taylor, in the state of West Virginia; that he knows Joseph Gillooly, one of the defendants in the above styled cause; that the said Joseph Gillooly is at the present time and has been for six years past and a resident in and a citizen of the county of Taylor and state of West Virginia.

Further affiant sayeth not.

LEE BENNETT.

Taken, sworn to and subscribed before me this 5th day of August,
1913.

HAYWARD FLEMING.

Notary Public.

My commission expires Dec. 17, 1919.

131

Affidavit of A. S. Warder, Jr.

(Filed Aug. 6, 1913.)

In the District Court of the United States for the Northern District
of West Virginia.

EAGLE GLASS & MANUFACTURING COMPANY, etc.,

vs.

THOMAS W. ROWE et al.

Affidavit of A. S. Warder.

STATE OF WEST VIRGINIA,

County of Taylor, To wit:

This day personally appeared before the undersigned notary public, A. S. Warder, who being first duly sworn says upon his oath

that he has known Joseph Gillooly during all of the past ten years and has at various times attended members of his family, (affiant being a physician). Affiant further says that the said Joseph Gillooly is at the present time, and has been during all of the past ten years, a citizen and resident in the city of Grafton, county of Taylor and state of West Virginia.

Affiant further says that the said Joseph Gillooly, one of the defendants in the above styled cause, has been because of his activity conspicuous in committee work preceding various elections and has voted at all of the municipal, state and national elections during said period as a citizen of the state of West Virginia.

And further affiant sayeth not.

A. S. WARDER, Jr.

Taken, sworn to and subscribed before me this 5th day of August, 1913.

[NOTARIAL SEAL.]

S. M. MUSGROVE,

Notary Public.

My commission expires Dec. 23, 1919.

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Order Dismissing Bill as to Gillooly.

And at another day, to-wit: On the 13th day of August, 1913, the following order was made and entered of record, to-wit:

In Equity. No. 77.

EAGLE GLASS AND MANUFACTURING COMPANY, Plaintiff,

vs.

THOMAS W. ROWE et al., Defendants.

This cause came on to be further heard at this term upon the answer of the defendant, Gillooly, that he is not a citizen of the state of Ohio, but is a citizen of the state of West Virginia, and his motion to dissolve the restraining order heretofore granted herein, and to dismiss plaintiff's suit, and was argued by counsel; and thereupon plaintiff's counsel announcing that they had examined into the truth of said claim of said defendant so set up in said answer and being now satisfied that said defendant, Gillooly, is not a citizen of the state of Ohio, but that he is a citizen of the state of West Virginia, and asking leave to dismiss its said bill as to said defendant, Joseph Gillooly, with costs, and without prejudice, and to retain its said suit as to all of the other defendants named in said bill, thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz.: upon plaintiff's motion the bill stands dismissed as to the defendant, Joseph Gillooly, individually and in his official capacities, as set forth in the bill, upon payment of costs, and without prejudice, and this suit is retained as to all other defendants named in said bill.

Order Continuing Motion for Injunction.

And at another day, to-wit: On the 24th day of September, 1913, the following order was made and entered of record, to-wit:

In Equity.

EAGLE GLASS & MANFG. CO.

vs.

THOMAS W. ROWE et al.

On this 24th day of September, 1913, came the plaintiff by Geo. R. E. Gilchrist and John C. Palmer, Jr., its solicitors, and by leave of court submit and file a motion in writing for a temporary injunction herein to be granted as of this day. And the judge of this court having received from John A. Howard, Esq., an attorney practicing in this court, a letter under date of September 22d, 1913, touching the consideration and determination of said motion on this day, doth order the same to be filed in the papers of this cause, and for reasons set forth by said Howard in said letter the court doth continue the hearing and determination of all matters arising upon plaintiff's said motion until the second day of the next regular term of this court to be held in Clarksburg, that is on October 8th, 1913, at 10 o'clock A. M., or soon thereafter as the hearing can be had.

Motion for Temporary Injunction.

(Filed Sept. 24, 1913.)

In Equity. No. 77.

EAGLE GLASS AND MANUFACTURING COMPANY, a Corporation Organized under and by Virtue of the Laws of State of West Virginia, a Citizen of said State, Having its Principal Office at Wellsburg, in said State and District, Plaintiff.

vs.

THOMAS W. ROWE, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually and as President of the American Flint Glass Workers' Union; William J. Croke, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of the American Flint Glass Workers' Union; William P. Clarke, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of the American Flint Glass Workers' Union; D. J. McGrail, of Toledo, Ohio, and a Citizen of State of Ohio, Individually and as Assistant Secretary of the American Flint Glass Workers' Union, Defendants.

Comes now the Eagle Glass and Manufacturing Company, the plaintiff named in the foregoing caption, by George R. E. Gilchrist, of its counsel, appearing in that behalf, and moves the court to grant an injunction as prayed for in said bill.

In support of this motion and of its right now to be heard thereon plaintiff refers to and makes part hereof its bill, exhibits, and accompanying affidavits filed in this court in this cause on the 28th day of July, 1913, the appearance of said defendants entered August 1, 1913, by John A. Howard, attorney, upon the appearance docket of this court as to said cause, and the telegram of John A. Howard making such appearance and directing the entry by the clerk of this court of such appearance.

There is attached hereto and made part hereof a certified copy under the seal of this court of a restraining order entered in this cause July 28, 1913, upon the filing of said bill, exhibits, and accompanying affidavits, which restraining order is now by a subsequent order made August 6, 1913, in full force and effect; and there is also attached hereto and made part hereof a certified copy under the seal of this court of the entry upon the appearance docket as to said cause of the appearance of said John A. Howard as attorney for said defendants, together with a copy of said telegram authorizing and directing said entry of said appearance to be made by said clerk.

In further support of its said motion for an injunction plaintiff will upon the hearing of its said motion therefor submit further affidavits.

GEORGE R. E. GILCHRIST,

Counsel for Plaintiff for the Purpose of this Motion.

Notice Attached to Petition.

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In Equity. No. 77.

EAGLE GLASS AND MANUFACTURING COMPANY, a Corporation Organized under and by Virtue of the Laws of the State of West Virginia, a Citizen of said State, Having its Principal Office at Wellsburg, in said State and District, Plaintiff,

vs.

THOMAS W. ROWE, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually and as President of the American Flint Glass Workers' Union; William J. Croke, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of the American Flint Glass Workers' Union; William P. Clarke, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of the American Flint Glass Workers' Union; D. J. McGrail, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually and as Assistant Secretary of the American Flint Glass Workers' Union, Defendants.

To each defendant named in the foregoing caption and to John A. Howard, Esquire, their attorney:

Please take notice that on Wednesday, the 24th day of September, 1913, at eleven o'clock A. M., in the United States Court Room, at Philippi, or as soon thereafter as counsel can be heard, the motion

of which the foregoing is a copy will be submitted to the District Court of the United States for the Northern District of West Virginia for the decision of that court thereon.

GEORGE R. E. GILCHRIST,
Counsel for Plaintiff for the Purpose of this Motion.

136 *Certificate Attached to said Motion.*

In the District Court of the United States for the Northern District of West Virginia.

In Equity. No. 77.

EAGLE GLASS AND MANUFACTURING COMPANY, a Corporation Organized under and by Virtue of the Laws of the State of West Virginia, a Citizen of said State, Having its Principal Office at Wellsburg, in said State and District, Plaintiff,

v.

THOMAS W. ROWE, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually, and as President of the American Flint Glass Workers' Union; William J. Croke, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of the American Flint Glass Workers' Union; William P. Clarke, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of the American Flint Glass Workers' Union; D. J. McGrail, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually and as Assistant Secretary of the American Flint Glass Workers' Union; Joseph Gillooly, of Bridgeport, Ohio, and a Citizen of the State of Ohio, Individually and as a Member of the Executive Board of the American Flint Glass Workers' Union, and as One of the Organizers of the American Flint Glass Workers' Union.

I, Charles B. Kefauver, clerk of the District Court of the United States for the Northern District of West Virginia, hereby certify that the following is a copy of a telegram received by me on the 31st day of July, 1913:

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Number.	Sent by	Rec'd by	Check.	
7 G	DA	B	20 Pd	31 191

Received at 4:30 P. M.
Dated Wh'g, W. V.

To Chas. B. Kefauver, Clerk U. S. Court, Philippi:

Send me copy of Bill and Affidavits in eagle glass co. versus rowe and others enter my appearance for defendants,

JOHN A. HOWARD,

and that, pursuant to the direction contained therein, I entered an

appearance upon the appearance docket of said court in the equity cause in the caption mentioned in the words and figures following:

Aug. 1, 1913, appearance of John A. Howard, Att'y for def'ts, entered.

And I further certify that said telegram is now on file in my office at Philippi, and that said appearance as hereinbefore noted as having been entered pursuant to said telegram, is that which is now found upon said docket as to said cause.

Given under my hand, and the seal of said court, at Philippi, said district, this 25th day of August, 1913.

[SEAL.]

C. B. KEFAUVER, Clerk.

Restraining Order Attached to Motion.

(This is a certified copy of the restraining order hereinbefore copied in this transcript, and is, therefore, not now here recopied. Clerk.)

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Letter of John A. Howard.

(Filed Sept. 24, 1913.)

John A. Howard, Attorney at Law.

WHEELING, W. VA., Sept. 22, 1913.

Hon. Alston G. Dayton, Philippi, West Virginia.

DEAR JUDGE: I have just seen Mr. Gilchrist and asked him to agree upon another day for hearing his motion in the case of Eagle Glass & Manufacturing Co. vs. Thomas W. Rowe et al. I have set a jury case for trial on the 24th of this month in the Circuit Court of Ohio County, it is an important case in which there will be a great number of witnesses and cannot be continued or adjourned to another day like a mere motion.

Mr. Gilchrist's motion is an effort to treat Rowe et al. as being subject to the jurisdiction of your Court upon the ground that I have appeared for them. I intend to challenge that question of fact and to show that on the contrary when the Clerk advised me that he understood my telegram to be an appearance for all of the defendants I promptly advised him that I did not appear for the defendants Rowe et al.

I certainly have a right to have the fact determined and have the right to be present when the matter is considered by your Honor.

Mr. Gilchrist seems to have an impression that because I do not appear for Rowe I have no right to be there, but this is an attempt to put me in the position of appearing for Rowe et al. and to take jurisdiction of them by reason of an appearance which I deny. I have a personal right to be present and resist an attempt to put me in the position of having appeared for clients for whom I explicitly refused to appear.

But the purpose of this letter is to ask your Honor to fix a day for Mr. Gilchrist's motion at which I can be present, and that may be any day next week.

139 I told Mr. Gilchrist I would write you protesting against the matter being heard in my absence and ask for another day and I am sending him a copy of this letter.

Yours very truly,

JOHN A. HOWARD.

Order Filing Motion to Correct Appearance Docket.

And at another day, to-wit: On the 8th day of October, 1913, the following order was made and entered of record, to-wit:

No. 77. In Equity.

EAGLE GLASS CO., etc.,

vs.

THOMAS W. ROWE et al.

This 8th day of October, 1913, came John A. Howard, an attorney practicing in this court, and who represented Joseph Gillooly, who was one of the defendants in this case, and presented his motion to correct the appearance docket by striking out the entry showing his appearance for all of the defendants, and presenting therewith his own affidavit in support of said motion, which motion and affidavit are ordered to be filed.

The hearing of which motion, and the hearing of the plaintiff's motion for a temporary injunction and the objections thereto interposed by John A. Howard, an attorney objecting in his own behalf, but not appearing for the defendants, and all matters arising thereon are continued to October 27th, at Wheeling.

The plaintiff reserves the right to object and to take exceptions to the motion to correct the record by moving to strike or otherwise as the plaintiff may be advised is proper in the premises.

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Notice.

(Filed Oct. 8, 1913.)

In Equity. No. 77.

EAGLE GLASS AND MANUFACTURING COMPANY, a Corporation Organized under and by Virtue of the Laws of the State of West Virginia, a Citizen of said State, Having its Principal Office at Wellsburg, in the said State and District, Plaintiff,

vs.

THOMAS W. ROWE et al., Defendants.

Mr. George R. E. Gilchrist, counsel for the plaintiff:

Please take notice that on October 8th, 1913, at ten o'clock A. M., or as soon thereafter as the matter may be heard, at Clarksburg, I

will move the court to correct the appearance of Thomas W. Rowe, William J. Croke, William P. Clarke and D. J. McGrail, by John A. Howard, attorney, has been entered as of August 1st, 1913, on the ground that the said entry is a mistake inadvertently made.

JOHN A. HOWARD,

An Attorney, Practicing in said Court and Appearing for Himself for the Purpose of Making said Motion.

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Motion to Correct Appearance Docket.

(Filed Oct. 8, 1913.)

In Equity. No. 77.

EAGLE GLASS AND MANUFACTURING COMPANY, a Corporation Organized under and by Virtue of the Laws of the State of West Virginia, a Citizen of said State, Having Its Principal Office at Wellsburg, in said State and District, Plaintiff,

vs.

THOMAS W. ROWE, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually and as President of the American Flint Glass Workers' Union; William J. Croke, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of the American Flint Glass Workers' Union; William P. Clarke, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of the American Flint Glass Workers' Union; D. J. McGrail, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually and as Assistant Secretary of the American Flint Glass Workers' Union, Defendants.

Motion to Correct Appearance Docket.

Now comes John A. Howard, attorney practicing in this court, and who appeared in the foregoing cause for Joseph Gillooly, who was named as one of the defendants in the said suit when originally instituted, and moved the court to correct the appearance docket by striking out the entry made therein on August 1st, 1913, by which the name of the said John A. Howard is entered as appearing for all of the defendants, and to make the said entry show that his appearance was for the defendant Joseph Gillooly only, on the ground that he, the said attorney, did not in fact appear for the other defendants, Thomas W. Rowe, William J. Croke, William P. Clarke and G. J. McGrail; that he, the said attorney, was not authorized to appear for the said defendants and that the said entry was the result of a mistake and inadvertance.

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And the said John A. Howard files his own affidavit in support of the said motion.

An Attorney, Practicing in the Said Court and Appearing for Himself for the Purpose of Making said Motion.

Affidavit of John A. Howard.

(Filed Oct. 8, 1913.)

In Equity. No. 77.

INGLE GLASS AND MANUFACTURING COMPANY, a Corporation Organized under and by Virtue of the Laws of the State of West Virginia, a Citizen of said State, Having Its Principal Office at Wellsburg, in the said State and District, Plaintiff,

vs.

THOMAS W. ROWE et al., Defendants.

Affidavit of John A. Howard.

STATE OF WEST VIRGINIA,

County of Harrison:

This day personally appeared before the undersigned authority, John A. Howard, who, being first duly sworn, says upon his oath that he is an attorney practicing in the said court; that he appeared in the said court on the 6th day of August, 1913, for Joseph Gillooly, who was then one of the defendants; that he expressly and distinctly announced to the court that he appeared for the said defendant Joseph Gillooly only, and that he did not appear for any of the other defendants; that the entry in the appearance docket, which is advised was made on the first day of August, 1913, entering his, affiant's, appearance for all of the defendants, was the result of inadvertence and mistake; that he, affiant, was not authorized to appear for Thomas W. Rowe, William J. Croke, William P. Clarke or D. J. McGrail; that his deliberate intention and purpose was to appear for the defendant Joseph Gillooly, and not for any of the other defendants, and to raise the question of the court's jurisdiction, which he did raise, as appears from the record in this cause;

that he, said affiant, on July 31, 1913, sent a telegram to the clerk of this court for the purpose of ordering copies of the bill and several affidavits then filed and of entering his appearance as counsel for the defendant Joseph Gillooly, and that he inadvertently formulated a telegram which the clerk evidently understood to be intended as directing the entry of his, affiant's, appearance as counsel for all of the defendants; that on the 4th day of August, 1913, he received a letter from the clerk, dated August 1st, enclosing the required copies of the bill and affidavits and advising affiant that he had entered his appearance for "the defendants," and that affiant on the morning of August 6th, before court was opened, visited L. V. G. Morris, deputy clerk, in the clerk's office, and called his attention to his mistake in entering affiant's appearance for "the defendants," and then and there advised the clerk that his telegram was not intended to authorize the clerk to enter his appearance for any of the defendants other than Gillooly, to which the

said L. V. G. Morris, deputy clerk, said to affiant, "There was some uncertainty about it," or words to that effect; that affiant thereupon having advised the clerk that the entry of his appearance for "the defendants" was a mistake, was not authorized and was not intended to be authorized, assumed that the clerk would make the necessary correction and dismissed the matter so far as his dealings with the clerk's office was concerned; that affiant followed up the matter immediately upon the court being opened by announcing in open court that his appearance was for the defendant Joseph Gillooly and not for any of the other defendants.

And further affiant sayeth not.

Taken, sworn to and subscribed before me this — day of October, 1913.

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Affidavit of Charles B. Ott.

(Filed Oct. 27, 1913.)

In Equity. No. 77.

EAGLE GLASS AND MANUFACTURING COMPANY, Plaintiff,
VS.

THOMAS W. ROWE et als., Defendants.

Affidavit of Chas. B. Ott.

I, Chas. B. Ott, the undersigned affiant, being first duly sworn upon my oath in Brooke county, West Virginia, say:

This affidavit is made by me for the purpose of being read by the court in the matter of the hearing upon a certain bill in equity filed in the District Court of the United States for the Northern District of West Virginia, in open court, at Philippi, on July 28, 1913, wherein the Eagle Glass and Manufacturing Company is plaintiff and Thomas W. Rowe and others are defendants, and upon the filing of which bill in said court on July 28, 1913, a restraining order from doing certain acts according to the relief prayed for by said bill. Reference is here made by me to said bill and to the said restraining order, and for all proper purposes they are each made a part of this affidavit.

I live in Wheeling, West Virginia; my age is 50 years, and my occupation is vice-president of the Eagle Glass and Manufacturing Company, the plaintiff corporation above mentioned in the caption or entitling portion of this affidavit, to which I refer.

I made one affidavit which was filed and sworn to by me on the ninth day of July, 1913, and I made another affidavit which was filed and sworn to by me on the twenty-eighth day of July, 1913, both of which were filed in open court in said cause at Philippi on July 28, 1913, and I now refer to each of those affidavits, reaffirm the statements therein made in each of them, say they are each

and all true, and make each of said two affidavits a part of this affidavit the same and as fully as if again set forth in so many words herein.

I make the present affidavit for use before the court in support of any motion or of any pleading in which its subject matter is properly usable.

CHAS. B. OTT.

(Two originals executed.)

145 Taken, sworn to and subscribed before me this 2nd day of August, 1913.

[NOTARIAL SEAL.]

J. A. GIST,
*Notary Public in for and of Brooke
County, West Virginia.*

My commission expires July 1, 1919.

Affidavit of H. W. Paull.

(Filed Oct. 27, 1913.)

No. 77. In Equity.

EAGLE GLASS AND MANUFACTURING COMPANY, Plaintiff,

v.

THOMAS W. ROWE et als., Defendants.

Affidavit of H. W. Paul-.

I, H. W. Paull, the undersigned affiant, being first duly sworn upon my oath in Brooke county, West Virginia, say:

This affidavit is made by me for the purpose of being read by the court in the matter of the hearing upon a certain bill in equity filed in the District Court of the United States for the Northern District of West Virginia, in open court, at Philippi, on July 28, 1913, wherein the Eagle Glass and Manufacturing Company is plaintiff and Thomas W. Rowe and others are defendants, and upon the filing of which bill in said court of July 28, 1913, a restraining order was issued by the court enjoining and restraining the defendants named in the said bill and in said restraining order from doing certain acts according to the relief prayed for by said bill. Reference is here made by me to said bill and to the said restraining order, and for all proper purposes they are each made a part of this affidavit.

I live at Wellsburg, Brooke county, West Virginia; my age is 47 years, and my occupation is president of the Eagle Glass and Manufacturing Company, the plaintiff corporation above mentioned in the caption or entitling portion of this affidavit, to which I refer. The Eagle Glass and Manufacturing Company is a corporation under the laws of the state of West Virginia, and has its principal place of business in Wellsburg, and its plant in which its principal

business is conducted and its glass works operated is located
 146 in Wellsburg, West Virginia. The Eagle Glass and Manu-
 facturing Company is an existing corporation under the laws
 of said state. I produce the original certificate of incorporation of
 the Eagle Glass and Manufacturing Company for the inspection of
 the court, upon the reading of this affidavit, and file herewith as a
 part of my affidavit, identified by the notary's signature as Exhibit
 No. A of my affidavit, a duly authenticated copy of said certificate
 of incorporation, as said certificate is recorded in the office of the
 clerk of the County Court of Brooke county, West Virginia.

I made an affidavit, which was filed in open court in said cause
 at Philippi on July 28, 1913, and I now refer to that affidavit,
 reaffirm the statements therein made, say they are true, and make
 it a part of this affidavit, the same and as fully as if again set forth
 in so many words herein.

I make the present affidavit for use before the court in support
 of any motion or of any pleading in which its subject matter is
 properly usable.

H. W. PAULL.

(Two originals executed.)

Taken, sworn to and subscribed before me this 2nd day of August,
 1913.

[NOTARIAL SEAL.]

J. A. GIST,
*Notary Public in, for and of Brooke
 County, West Virginia.*

My commission expires July 1, 1919.

EXHIBIT A WITH AFFIDAVIT OF H. W. PAULL.

(Filed Oct. 27, 1913.)

Certificate of Incorporation.

Eagle Glass and Manufacturing Company.

I, Wm. M. O. Dawson, Secretary of State of the State of West
 Virginia, hereby certify that an Agreement duly acknowledged and
 accompanied by the proper affidavits, has been this day delivered
 to me, which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of
 Eagle Glass and Manufacturing Company for the purpose of
 147 manufacturing, selling, buying, decorating Glassware, China
 and Earthenware of all kinds and descriptions, for manu-
 facturing, buying and selling all kinds of glass, china and Earthen-
 ware materials, Dyes, Molds, Presses and Machinery for drawing,
 pressing, casting and spinning all kinds of metal goods, for manu-
 facturing, buying and selling all kinds of food products that may be
 packed in China Glass, earthenware or metal; for manufacturing,
 buying and selling electricity; for drilling for oil, gas and water

and for selling same. Which corporation shall keep its principal office or place of business at Wellsburg, W. Va., in the County of Brooke and State of West Virginia, and is to expire on the 27th day of October, 1947. And for the purpose of forming the said corporation, we have subscribed the sum of Five Hundred Dollars to the Capital thereof, and have paid in on said subscriptions the sum of Fifty Dollars, and desire the privilege of increasing the said capital, by the sale of additional shares from time to time, to \$50,000 Dollars in all The Capital so subscribed is divided into Shares of \$100.00 each, which are held by the undersigned respectively, as follows, that is to say:

Names.	Residence.	No. of shares.
By J. T. Paull, Ohio County, W. Va.		1
" James Paull, Wellsburg, W. Va.		1
" H. W. Paull, " "		1
" S. O. Paull, " "		1
" W. C. Jacob, " "		1

And the Capital to be hereafter sold is to be divided into Shares of the like amount.

Given under our hands this 27 day of October, 1897.

J. F. PAULL.
JAMES PAULL.
H. W. PAULL.
S. O. PAULL.
W. C. JACOB.

Wherefore, The corporators named in the said Agreement, and who have signed the same, and their successors and assigns, are hereby declared to be from this date until the 27th day of October, nineteen hundred and forty-seven, a corporation by the name and for the purposes set forth in said Agreement.

148 Given under my hand and the Great Seal of the said State at the City of Charleston this first day of November, eighteen hundred and ninety-seven.

[Great Seal.]

WM. M. O. DAWSON,
Secretary of State.

STATE OF WEST VIRGINIA,
County of Brooke, To wit:

I, G. W. McCord, clerk of the County Court of said county of Brooke, do certify that the foregoing certificate of incorporation was this day presented to me in my said office, and duly admitted to record therein.

Given under my hand this 6th day of December, 1897.

Teste:

G. W. McCORD, *Clerk.*

STATE OF WEST VIRGINIA,

County of Brooke, ss:

I, K. C. Brashear, clerk of the County Court of Brooke county, having the custody of the files, journals and records of said court, do hereby certify that the foregoing is a true and accurate copy of certificate of incorporation of Eagle Glass and Manufacturing Company, bearing date November 1, 1897, as to the same appear of record in my office, in Incorporation Book No. 2, page 120, and I further certify that I have carefully compared the foregoing copy with the original record, and that the same is a full and correct transcript thereof.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Wellsburg, Brooke county, West Virginia, this 2nd day of August, 1913.

[SEAL.]

K. C. BRASHEAR,

Clerk County Court, Brooke County, W. Va.

STATE OF WEST VIRGINIA,

County of Brooke, ss:

I, S. H. Baxter, president of the County Court of Brooke county, the same being a court of record, do hereby certify that K. C.

Brashear, whose genuine signature is attached to the foregoing certificate, was at the date thereof, and now is, clerk of the County Court of Brooke county, and as such full faith and credit are due his acts, and that the above certificate and attestation are in due form of law, and made by the proper officer.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Wellsburg, Brooke county, West Virginia, this 2nd day of August, 1913.

[Court Seal.]

S. H. BAXTER,

President of the County Court of Brooke County.

STATE OF WEST VIRGINIA,

County of Brooke, ss:

I, K. C. Brashear, clerk of the County Court of Brooke county, hereby certify that S. H. Baxter is the president of said County Court, duly commissioned and qualified, and now acting as such.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Wellsburg, Brooke county, West Virginia, this 2nd day of August, 1913.

[Court Seal.]

K. C. BRASHEAR,

Clerk of the County Court of Brooke County, West Virginia.

Affidavit of James Paull.

(Filed Oct. 27, 1913.)

No. 77. In Equity.

EAGLE GLASS AND MANUFACTURING COMPANY, Plaintiff,

v.

THOMAS W. ROWE et als., Defendants.

Affidavit of James Paull.

I, James Paull, the undersigned affiant, being first duly sworn upon my oath in Brooke county, West Virginia, say:

This affidavit is made by me for the purpose of being read by the court in the matter of the hearing upon a certain bill in equity filed in the District Court of the United States for the Northern District of West Virginia, in open court, at Philippi, on July 28, 1913, wherein the Eagle Glass and Manufacturing Company is plaintiff and Thomas W. Rowe and others are defendants, and upon the filing of which bill in said court on July 28, 1913, a restraining order was issued by the court enjoining and restraining the defendants named in the said bill and in said restraining order from doing certain acts according to the relief prayed for by said bill. Reference is here made by me to said bill and to the said restraining order, and for all proper purposes they are each made a part of this affidavit.

I live at Wellsburg, Brooke county, West Virginia; my age is 51 years, and my occupation is treasurer of the Eagle Glass and Manufacturing Company, the plaintiff corporation above mentioned in the caption or entitling portion of this affidavit, to which I refer.

I made an affidavit, which was filed in open court in said cause at Philippi on July 28, 1913, and I now refer to that affidavit, reaffirm the statements therein made, say they are true, and make it a part of this affidavit the same and as fully as if again set forth in so many words herein.

I make the present affidavit for use before the court in support of any motion or of any pleading in which its subject matter is properly usable.

JAMES PAULL.

(Two originals executed.)

Taken, sworn to and subscribed before me this 2nd day of August, 1913.

[NOTARIAL SEAL.]

J. A. GIST,

*Notary Public in, for and of Brooke
County, West Virginia.*

My commission expires July 1, 1919.

151

Affidavit of Charles Cusick.

(Filed Oct. 27, 1913.)

No. 77. In Equity.

EAGLE GLASS AND MANUFACTURING COMPANY, Plaintiff,

v.

THOMAS W. ROWE et als., Defendants.

Affidavit of Chas. Cusick.

I, Chas. Cusick, the undersigned affiant, being first duly sworn upon my oath in Brooke county, West Virginia, say:

This affidavit is made by me for the purpose of being read by the court in the matter of the hearing upon a certain bill in equity filed in the District Court of the United States for the Northern District of West Virginia in open court, at Philippi, on July 28, 1913, wherein the Eagle Glass and Manufacturing Company is plaintiff and Thomas W. Rowe and others are defendants, and upon the filing of which bill in said court on July 28, 1913, a restraining order was issued by the court enjoining and restraining the defendants named in the said bill and in said restraining order from doing certain acts according to the relief prayed for by said bill. Reference is here made by me to said bill and to the said restraining order, and for all proper purposes they are each made a part of this affidavit.

I live in Brooke county, West Virginia; am 41 years of age, and have been and am now employed by the Eagle Glass and Manufacturing Company as a glass worker.

I made an affidavit, which was filed in open court in said cause at Philippi on July 28, 1913, and I now refer to that affidavit, reaffirm the statements therein made, say they are true, and make it a part of this affidavit the same and as fully as if again set forth in so many words herein.

I make the present affidavit for use before the court in support of any motion or of any pleading in which its subject matter is properly usable.

CHAS. CUSICK.

(Two originals executed.)

152 Taken, sworn to and subscribed before me this 2nd day of August, 1913.

[NOTARIAL SEAL.]

J. A. GIST,

*Notary Public in, for and of Brooke
County, West Virginia.*

My commission expires July 1, 1919.

Affidavit of George Goldbrandsen.

(Filed Oct. 27, 1913.)

No. 77. In Equity.

EAGLE GLASS AND MANUFACTURING COMPANY, Plaintiff,

v.

THOMAS W. ROWE et als., Defendants.

Affidavit of George Goldbrandsen.

I, George Goldbrandsen, the undersigned affiant, being first duly sworn upon my oath in Brooke county, West Virginia, says:

This affidavit is made by me for the purpose of being read by the court in the matter of the hearing upon a certain bill in equity filed in the District Court of the United States for the Northern District of West Virginia, in open court, at Philippi, on July 28, 1913, wherein the Eagle Glass and Manufacturing Company is plaintiff and Thomas W. Rowe and others are defendants, and upon the filing of which bill in said court on July 28, 1913, a restraining order was issued by the court enjoining and restraining the defendants named in the said bill and in said restraining order from doing certain acts according to the relief prayed for by said bill. Reference is here made by me to said bill and to the said restraining order, and for all proper purposes they are each made a part of this affidavit.

I live in Brooke county, West Virginia; am 29 years of age, and have been and am now employed by the Eagle Glass and Manufacturing Company as a glass blower.

I made an affidavit which was filed in open court in said cause at Philippi on July 28, 1913, and I now refer to that affidavit. 153 I reaffirm the statements therein made, say they are true, and make it a part of this affidavit the same and as fully as if again set forth in so many words herein.

I make the present affidavit for use before the court in support of any motion or of any pleading in which its subject matter is properly usable.

GEORGE GOLDBRANSEN.

(Two originals executed.)

Taken, sworn to and subscribed before me this 2nd day of August, 1913.

[NOTARIAL SEAL.]

J. A. GIST,

*Notary Public in, for and of Brooke
County, West Virginia.*

My commission expires July 1, 1919.

Affidavit of Wm. H. Bayless.

(Filed Oct. 27, 1913.)

No. 77. In Equity.

EAGLE GLASS AND MANUFACTURING COMPANY, Plaintiff,

v.

THOMAS W. ROWE et als., Defendants.

Affidavit of Wm. H. Bayless.

I, Wm. H. Bayless, the undersigned affiant, being first duly sworn upon my oath in Brooke county, West Virginia, say:

This affidavit is made by me for the purpose of being read by the court in the matter of the hearing upon a certain bill in equity filed in the District Court of the United States for the Northern District of West Virginia, in open court, at Philippi, on July 28, 1913, wherein the Eagle Glass and Manufacturing Company is plaintiff and Thomas W. Rowe and others are defendants, and upon the filing of which bill in said court on July 28, 1913, a restraining order was issued by the court enjoining and restraining the defendants named in the said bill and in said restraining order from doing certain acts according to the relief prayed for by said bill. Reference is here made by me to said bill and to the said restraining order, and for all proper purposes they are each made a part of this affidavit.

I live in Brooke county, West Virginia; am 41 years of age, and have been and am now employed by the Eagle Glass and Manufacturing Company as a presser.

I made an affidavit which was filed in open court in said cause at Philippi on July 28, 1913, and I now refer to that affidavit, reaffirm the statements therein made, say they are true, and make it a part of this affidavit the same and as fully as if again set forth in so many words herein.

I make the present affidavit for use before the court in support of any motion or of any pleading in which its subject matter is properly usable.

WM. H. BAYLESS.

(Two originals executed.)

Taken, sworn to and subscribed before me this 2nd day of August, 1913.

[NOTARIAL SEAL.]

J. A. GIST,
*Notary Public in, for and of Brooke
County, West Virginia.*

My commission expires July 1, 1919.

Affidavit of William Roth.

(Filed Oct. 27, 1913.)

No. 77. In Equity.

EAGLE GLASS AND MANUFACTURING COMPANY, Plaintiff,
v.
THOMAS W. ROWE et als., Defendants.

Affidavit of William Roth.

I, William Roth, the undersigned affiant, being first duly sworn upon my oath in Brooke county, West Virginia, say:

This affidavit is made by me for the purpose of being read by the court in the matter of the hearing upon a certain bill in equity filed in the District Court of the United States for the Northern District of West Virginia, in open court, at Philippi, on July 28, 1913, wherein the Eagle Glass and Manufacturing Company is plaintiff and Thomas W. Rowe and others are defendants, and upon the filing of which bill in said court on July 28, 1913, a restraining order was issued by the court enjoining and restraining the defendants named in the said bill and in said restraining order from doing certain acts according to the relief prayed for by said bill. Reference is here made by me to said bill and to the said restraining order, and for all proper purposes they are each made a part of this affidavit.

I live in Brooke county, West Virginia; am 23 years of age, and have been and am now employed by the Eagle Glass and Manufacturing Company as a glass blower.

I made an affidavit which was filed in open court in said cause at Philippi on July 28, 1913, and I now refer to that affidavit, reaffirm the statements therein made, say they are true, and make it a part of this affidavit the same and as fully as if again set forth in so many words herein.

I make the present affidavit for use before the court in support of any motion or of any pleading in which its subject matter is properly usable.

WILLIAM ROTH.

(Two originals executed.)

Taken, sworn to and subscribed before me this 4th day of August, 1913.

[NOTARIAL SEAL.]

J. A. GIST.
Notary Public in, for and of Brooke
County, West Virginia.

My commission expires July 1, 1919.

Affidavit of L. E. Yeager.

(Filed Nov. 27, 1913.)

No. 77. In Equity.

EAGLE GLASS AND MANUFACTURING COMPANY, Plaintiff,

v.

THOMAS W. ROWE et al., Defendants.

L. E. Yeager, being first duly sworn upon his solemn oath, says:

My name is L. E. Yeager; age, 29; residence, Wellsburg, West Virginia; occupation, glass blower at the glass factory of the
156 Eagle Glass and Manufacturing Company, the plaintiff in this case, at the company's plant at Wellsburg. I have worked for the Eagle—it will be ten years this fall. When I first started to work at the Eagle I turned out and later on I became a presser, and later on I was given a job as a blower. I did not serve an apprenticeship as a blower in the ordinary acceptance of the term. When I started in to be a blower I was paid piece work and received the regular piece work price. I was not docked. I began to blow about eighteen months ago and have continued that ever since. During the time that I have been working for the Eagle there has been no labor trouble there, and there has been no dissatisfaction on the part of any of the employes to my knowledge except such as has been brought about by the efforts of the American Flint Glass Workers' Union to unionize the plant. During the last couple of months or so an organizer by the name of Gillooly has been at work trying to organize the men and the plant and in doing his work he has endeavored to cause the men to become dissatisfied with either their wages or with the conditions of their employment. I do not know how successful he has been. I met Gillooly at my own house. He came there of his own accord and introduced himself to me. I had heard of Gillooly being in town before he came to my house. When he introduced himself he said to me he supposed I knew who he was and why he was here. I told him I thought I did. He then said he was an organizer for the American Flint Glass Workers' Union and that he had come to Wellsburg to organize the plant of the Eagle company. He gave me to understand that he was going to stay as long as it might be necessary to do the job. He wanted me to quit working at the Eagle and said if I would quit he would get me a job at a union factory, naming the bottling works in Wellsburg. He said I would not have to leave home that way. I have talked with Gillooly probably four times. In the course of my talks with Gillooly upon the subject of Gillooly's work in trying to organize the Eagle plant, I suggested to him that I believe it would be better if he would try to arrange a meeting with the firm, or Paull brothers, and that that would be a better way than to work amongst the men first. That suggestion of mine brought a letter to me from T. W. Rowe, dated June 23d, 1913, written to me from Toledo, Ohio, in which Rowe assumed that I had become the

chairman of a committee of the men to call upon Paull brothers for the purpose of trying to arrange a conference. I had no arrangement of that kind and was not chairman of any committee. I don't know what Gillooly report- to Rowe. Anyhow, I received this letter written June 23d, from Rowe, which I file now as a part of this affidavit, marked "Exhibit "A" thereto. As a matter of fact I did not approach the Paulls. Before Gillooly left Wellsburg, just prior to the 4th of July, which date preceded the holding of the Flint Glass Workers' Convention, Gillooly told me that he was doing good work and that I would be surprised how many he had. While Gillooly was away he wrote me a letter from Columbus, Ohio, which I think is dated July 22d, 1913, in which he stated that he was coming back to Wellsburg and then was going to pull out the men. I let Mr. Charles Ott have that letter.

I signed one of the employment cards that are in use by the Eagle company, and I also signed a paper containing a statement that I am satisfied with my employment, with my wages and with my work, and that I would like to remain in the employ of the Eagle Company, which latter paper was signed by a number of the other employees of the Eagle company. I still feel the same way about that matter.

I work nearly always piece work and since I have been blowing I have never received less than four dollars a day for a day's work. My pays vary in amount, due in part to how hard I work and to the weather. My last pay, August 2d, 1913, was \$54.25 and was for nine days' time.

When we are working bad glass we are paid turn work wages, otherwise day wages, of four dollars per day. I know I get paid myself this way, and my information is that the other employees work the same way. I never heard that it was otherwise from any of the men, and believe that on the same subject they are treated the same as I am.

I make this affidavit for use before the court in support of any motion or of any pleading in which its subject matter is properly usable.

L. E. YEAGER.

(Two originals executed.)

Taken, sworn to and subscribed before me this 4th day of August, 1913.

[NOTARIAL SEAL.]

J. A. GIST,
Notary Public in, for and of Brooke
County, West Virginia.

My commission expires July 1, 1919.

158 EXHIBIT A WITH AFFIDAVIT OF L. E. YEAGER.

(Filed Oct. 27, 1913.)

American Flint Glass Workers' Union.

N. H. of A. F. G. W. U. of North America.

Organized July 1st, 1878.

(Emblems.)

T. W. Rowe, President; Wm. J. Croke, Vice-President; Wm. P. Clarke, Sec'y-Treas.; D. J. McGrail, Ass't Sec'y.

Rooms 928-929-930-931-932 Ohio Building, Madison Avenue and Superior Street.

Bell Phone, Main 636; Home Phone, 6716.

(Union Label.)

Affiliated to The American Federation of Labor.

TOLEDO, O., June 23/13.

Mr. Louis E. Yeager, Wellsburg, W. Va.

MY DEAR SIR: Organizer Gillooly has just reported the fact that it is your intention, as chairman of a committee, to call upon Messrs. Samuel and Harry Paull of the Eagle Glass Co. for the purpose of trying to arrange a conference between that concern and the officers of our union with a view of effecting a pleasant and satisfactory settlement between that company and our organization. I am taking advantage of this opportunity to congratulate you on your splendid intention and wish you success in your efforts, as I feel that if we can get a conference with that company it may lead to a settlement with them and thereby avoid any ugly conflict between our organization and the Eagle Glass Co.

In visiting that concern, I advise that you approach them in a very conservative manner and not say anything that would have a tendency to aggravate them in the slightest possible way.

Sincerely hoping you will be successful in your efforts, and assuring you that we appreciate the fraternal attention you are giving our affairs, I am,

Gratefully yours,

T. W. ROWE.

Affidavit of Harden Bucy.

(Filed Oct. 27, 1913.)

No. 77. In Equity.

EAGLE GLASS AND MANUFACTURING COMPANY, Plaintiff,

v.

THOMAS W. ROWE et als., Defendants.

Harden Bucy, being first duly sworn upon his oath, says:
 My name is Harden Bucy; age, 30; residence, Wellsburg, Brooke county, West Virginia; and occupation, glass blower. I am now employed as a glass blower by the Eagle Glass and Manufacturing Company, the plaintiff in this suit. I have been a glass blower for about twelve years, about nine months of which I worked at the Rodefer factory in Bellaire, Ohio, and two years and a little over I worked at the Riverside works in Wellsburg. I have worked for about the last years at the Eagle, where I now work. At the time I worked at the Rodefer in Bellaire and at the time I worked at the Riverside in Wellsburg I was a member of the union, that is, a member of the American Flint Glass Workers' Union. I left the union some years ago because I could not get steady enough employment at the union factory referred to where I worked, one of them being in Bellaire and the other of them being — Wellsburg. I was working at the Riverside as a union man when the 1907 panic came and that factory shut down. I was idle then for six or seven months. The Eagle did not shut down and I left the union and entered the employment of the Eagle company. I have worked for the Eagle Company ever since. I am not now a member of the American Flint Glass Workers' Union and wish to continue in the employment of the Eagle company. I signed one of the cards used by the Eagle company by the terms of which I am not to join the union while I am employed by the Eagle company and by which the Eagle company agrees that it will run non-union while I am employed by it.

Joseph Gillooly, an organizer of the American Flint Glass Workers' Union, asked me to come back to the old organization again and stand firm, and I told him that I was working here and
 160 was satisfied right where I was at, and I told him that I was making better money here than any union house I ever worked in.

I have read an article published in The Wheeling Majority in its issue of July 31st, 1913, in which Gillooly is said to have stated that the conditions prevailing at the Eagle glass factory and the stamping works run in connection make the place practically a slave pen. There is nothing in that at all. The article states that the blowers are paid \$3.00, when the fact is that the blowers are paid \$4.00 and more, according to the job. I know about the wages paid to the blowers, because that is my own part of the business. The article contains a misstatement in respect to when the men work bad glass.

When we work bad glass we make it known and then we are paid turn work, \$4.00 a day. This article says that we work for nothing.

I have made as high as \$75.00 in one pay for eleven days' work, and last pay ending Saturday, August 2d, 1913, my pay for eight days and about an hour was \$61.10.

I am satisfied with my work at the Eagle, with the treatment given to me by my employers, and with the conditions which surround me at the factory.

I make the present affidavit for use before the court in support of any motion or of any pleading in which its subject matter is properly usable.

HARDEN BUCY.

(Two originals executed.)

Taken, sworn to and subscribed before me this 4th day of August, 1913.

[NOTARIAL SEAL.]

J. A. GIST,
Notary Public in, for and of Brooke
County, West Virginia.

My commission expires July 1, 1919.

161

Affidavit of George Lucas.

(Filed Oct. 27, 1913.)

No. 77. In Equity.

EAGLE GLASS AND MANUFACTURING COMPANY, Plaintiff,
v.

THOMAS W. ROWE et als., Defendants.

George Lucas, being first duly sworn on his solemn oath, says:

My name is George Lucas; age, 48; residence, Wellsburg, West Virginia; and occupation, presser at the glass works of the Eagle Glass and Manufacturing Company, the plaintiff in this suit. I have worked for the Eagle the greater portion of the time since 1896. I was working at Wheeling in the La Belle mill at the time of the 1900 strike at the Eagle and I came back to the Eagle in 1902, or, to be more exact, I think it was in August in 1901 that I came back to the Eagle and started to work there as a watchman, until January 1st, 1902, when I was put to work as a presser, and I have worked at the Eagle as a presser ever since. I am a married man with seven children. I bought a home in Wellsburg, which I have partly paid for out of my earnings at the Eagle, and expect to keep on and pay out with my earnings there if the factory is still operated, as I hope it will be, and if it is not interrupted by the efforts of the American Flint Glass Workers' Union to compel the management to operate a union factory. I am satisfied with the treatment that *and* has been given *be* by my employers, and I feel that my employers are satisfied with me, otherwise they would not

have given me employment for so many years. Therefore I look for a continuance of my present employment. I am not a member of the American Flint Glass Workers' Union nor of any union, and never was.

A few weeks ago Joseph Gillooly was introduced to me in Wellsburg. He told me he was an organizer for the American Flint Glass Workers' Union, and he wanted to know if I would not take a job out at Lancaster, Ohio, at the Hocking Glass Works, a union glass works. I told him no, that I did not want to leave home. I have talked to Gillooly many times. He used to board at the same place I board at, and I generally saw him every day, usually at 162 supper time. He told me that that employment card in use at the Eagle wasn't worth a damn. I told him I had signed that card.

I make the present affidavit for use before the court in support of any motion or of any pleading in which its subject matter is properly usable.

GEO. LUCAS.

(Two originals executed.)

Taken, sworn to and subscribed before me this 4th day of August, 1913.

[NOTARIAL SEAL.]

J. A. GIST,
*Notary Public in, for and of Brooke
County, West Virginia.*

My commission expires July 1, 1919.

Affidavit of John E. Myer.

(Filed Oct. 27, 1913.)

No. 77. In Equity.

EAGLE GLASS AND MANUFACTURING COMPANY, Plaintiff,
v.

THOMAS W. ROWE et als., Defendants.

John E. Myer, being first duly sworn upon his oath, says: My name is John E. Myer; age, fifty-three; residence, Wellsburg, Brooke county, West Virginia; and occupation, presser. I am now employed as a presser in the glass factory of the Eagle Glass and Manufacturing Company, the plaintiff in this case, at its works in Wellsburg. I have worked for the Eagle for about the last sixteen years, and during the last twelve years and a little over I have worked at the Eagle as a presser. With few exceptions in cases of temporary shut downs I have worked continuously at the Eagle during the entire period of time mentioned. The Eagle runs very steady. At the time of the strike in 1900, when the American Flint Glass Workers' Union undertook to unionize the Eagle, I was a mixer and

was not the subject of the unionizing efforts made by the union at that time. I am a married man with five children, and during the time I have worked for the Eagle I purchased property in Wellsburg in which I live as my home. I have partly paid for the
 163 property during the time I have been working for the Eagle and expect to complete paying for it through the wages make at the Eagle. I am probably too old now to look up new employment and a new location. My experience with the Eagle Company has been entirely satisfactory to me, otherwise I would not have stayed here and worked for the Eagle for sixteen years, and my work has been evidently satisfactory to my employers, otherwise they would not have given me employment during that time. Naturally I expect to continue working at the same place for an indefinite length of time in the future. I would be very sorry indeed to see the factory shut down.

Six weeks or more ago, Joseph Gillooly and Elmer Blankensop came to my home at night. I knew Blankensop but did not know Joseph Gillooly. Blankensop introduced Gillooly to me and Gillooly said that he was an organizer sent here by the American Flint Glass Workers' Union to unionize the men and the Eagle factory. Gillooly said that he had most of the men already in the union and asked me to join while I had the chance or otherwise I might be left out in the cold. I told Gillooly I had property in Wellsburg and I would not want to leave Wellsburg. I told Gillooly that the Paull said that they would close down their glass factory rather than unionize and Gillooly said that that was all a bluff and that the Paull would not do anything of that sort. Gillooly told me that if I would join he would get me a job at the Riverside Works at Wellsburg, a union factory.

I have signed one of the employment cards in use by the Eagle Glass and Manufacturing Company by the terms of which I am not to join the American Flint Glass Workers' Union while I am working for it. I am satisfied with my job at the Eagle, with the treatment that is given me by my employers, and with the wages that I make, and with the way the factory generally is run. I would like to see the Eagle continue to operate as it now operates.

I have read an article published in The Wheeling Majority of the issue of Thursday, July 31, 1913, and what Gillooly, the organizer is said to have stated about the Eagle Glass Works, that the conditions prevailing at the Eagle Glass Factory and the stamping work run in connection make the place practically a slave pen, that statement is not true. As a matter of fact the employes of the Eagle have, I expect, more liberties than the employes of any other factory in the Ohio Valley; that is the general experience and feeling of the employes of the Eagle. There is another misstatement
 164 in what Gillooly said in that article where he speaks of the men working out bad glass and says that we do not receive one cent for that. As a presser I know that when we work bad glass and make it known, we are told that we will be paid day wages, that is, \$4.00 a day.

I have made as high as \$88.00 in one pay at the Eagle, covering

eleven days' work; and the last pay, that is, which was on August 2, 1913, I made \$56.35 for ten days' work; I lost one day during that pay.

I make the present affidavit for use before the court in support of any motion or of any pleading in which its subject matter is properly usable.

JOHN E. MYER.

(Two originals executed.)

Taken, sworn to and subscribed before me this 4th day of August, 1913.

[NOTARIAL SEAL.]

J. A. GIST,

*Notary Public in, for and of Brooke
County, West Virginia.*

My commission expires July 1, 1919.

Affidavit of Elmer Baker.

(Filed Oct. 27, 1913.)

No. 77. In Equity.

EAGLE GLASS AND MANUFACTURING COMPANY, Plaintiff,

v.

THOMAS W. ROWE et als., Defendants.

Elmer Baker, being first duly sworn on his solemn oath, says: My name is Elmer Baker; age, thirty-two; residence, Wellsburg, West Virginia, and occupation, glass blower at the factory of the Eagle Glass and Manufacturing Company, plaintiff in this suit, at Wellsburg. I have been working as a glass blower for the Eagle for the last five years or more. I am not now a member of the American Flint Glass Workers' Union. I am a Norwegian by birth and have been in the United States a little over nine years. I joined the American Flint Glass Workers' Union at Charleroi, Pennsylvania. I joined the union in Charleroi but did not work union at Charleroi.

I worked union at Evansville, Indiana, and in Washington, 165 Pennsylvania. When I was working union at Washington, Pennsylvania, in 1907 and 1908, there was a panic and we did not work any more after 1907. I was idle for about four months in Washington and then came to Wellsburg and got a job as a glass blower at the Eagle, which job I have held ever since. I quit the union when I left Washington and came to work at the Eagle, and I have not belonged to the union since. I prefer to work at the Eagle non-union for the reason that I have steady work and good wages and am treated right both as to the conditions of labor and the surroundings at the plant. I have had my own experience at union factories and at this non-union factory, and my preference is for this factory as it is run now non-union. I am a married man, have three children, own my home in Wellsburg, which I bought

after I started to work at the Eagle and have partly paid for out of my earnings at the Eagle. I think I have averaged about sixteen hundred dollars a year at the Eagle. I hope to be able to pay the remainder on my home place through my present employment. I am satisfied with my employment and believe that my employers are satisfied with me.

Some weeks ago I was introduced to Joseph Gillooly in Wellsburg. He told me that he was an organizer for the American Flint Glass Workers' Union and that he had come to Wellsburg to union- the Eagle works. He told me he was coming to see me at my house and talk to me about joining the union, and he did come but I was not there. He told me he was getting along well in his work of getting the men to join the union and said that it would only be a short time until he would have the works unionized.

I make the present affidavit for use before the court in support of any motion or of any pleading in which its subject matter is properly usable.

ELMER A. BAKER.

(Two originals executed.)

Taken, sworn to and subscribed before me this 4th day of August, 1913.

[NOTARIAL SEAL.]

J. A. GIST,
Notary Public in, for, and of Brooke
County, West Virginia.

My commission expires July 1, 1919.

166

Affidavit of C. I. Miller.

(Filed Oct. 27, 1913.)

No. 77. In Equity.

EAGLE GLASS AND MANUFACTURING COMPANY, Plaintiff,

v.

THOMAS W. ROWE et als., Defendants.

C. I. Miller, being first duly sworn on his solemn oath, says: My name is C. I. Miller; age, thirty; residence, Wellsburg, West Virginia; occupation, glass blower at the glass works of the Eagle Glass and Manufacturing Company, the plaintiff in this suit, at Wellsburg. I learned my trade as glass blower during the last eleven or twelve years, during all of which time I have worked at the Eagle works. I began as an apprentice at the Eagle. I am not a member of the American Flint Glass Workers' Union, and never have been. I am a married man, with two children, and have my own home in Wellsburg, which I bought since I entered the employment of the Eagle Company and have paid for it out of my earnings. I have never worked at any other glass factory and am satisfied entirely with my employers and with the conditions which surround me in my em-

employment, otherwise I would have sought work elsewhere. I suppose employers are satisfied with me, otherwise I would not have been employed for so many years. Under the circumstances I expect to continue in the employment of the Eagle Company indefinitely. I have signed one of the employment cards in use by the company on the subject of the union. I signed it voluntarily and am satisfied with that arrangement.

I was introduced to Joseph Gillooly, some weeks ago, by Mr. Rankensop in Wellsburg. Mr. Gillooly told me that he was an organizer sent here by the American Flint Glass Workers' Union to organize the Eagle Glass Works, and he told me that he was going to work in Wellsburg until he did unionize the Eagle. In that talk Gillooly asked me to join the Flint Glass Workers' Union, and I told him I didn't believe I cared to and told him that I was well enough satisfied with my work at the Eagle as it was. He then asked me if I couldn't take a job at a union factory at Cameron and told me he would get me a job there. I told him that I did not want one there and that I did not want to leave home. He came to my house a few nights later of his own accord and without having made any arrangements for it with me. I was at home and he again asked me to join the union, and again asked me to quit working at the Eagle and go to work at the Cameron union factory. I told him the same as I did the other time, that I did not care to join the union and was satisfied with my job at the Eagle, and that I could not leave home. He did not see me after that to talk with me again on those subjects. When Gillooly left my house that time he told me he would see me again. I haven't seen him at all.

When bad glass is being worked at the Eagle we are paid by the day, \$4.00 a day. We never work for nothing and are not asked to. We never have been asked to, and never have worked for nothing. Our pays vary in amount according to the season of the year and the time I work. I have at times run as high as sixty-two or sixty-three dollars a pay. Pays are every two weeks. My last pay of August 1, 1913, was something like forty-nine dollars. We did not work all time that pay owing to hot weather.

I make the present affidavit for use before the court in support of my motion or of any pleading in which the subject matter is properly usable.

I. C. MILLER.

(Two originals executed.)

Taken, sworn to and subscribed before me this 4th day of August, 1913.

[NOTARIAL SEAL.]

J. A. GIST,
Notary Public in, for and of Brooke
County, West Virginia.

My commission expires July 1, 1919.

Affidavit of Homer A. Scott.

(Filed Oct. 27, 1913.)

No. 77. In Equity.

EAGLE GLASS AND MANUFACTURING COMPANY, Plaintiff,

v.

THOMAS W. ROWE et als., Defendants.

Homer A. Scott, being first duly sworn on his solemn oath, 168 says: My name is Homer A. Scott; age, thirty-two; residence, Wellsburg, West Virginia; occupation, glass blower. I am now employed by the Eagle Glass and Manufacturing Company and work as a glass blower in the glass factory of the Eagle Company at Wellsburg. I learned my trade as a glass blower at the Eagle and have worked there for the last eleven years.

Some weeks ago I was introduced to Joseph Gillooly, who told me that he was an organizer of the American Flint Glass Workers' Union and had come here to unionize the Eagle. He asked me to join the union and I told him that I didn't care anything about it. He told me that it would be better for me if I did. He said that I wouldn't lose anything and I told him to put up the money in bank and then he would come back and talk to me. He didn't put up the money in bank and I have not talked to him since, although I have seen him on the streets since that time. I have talked with a good many of the glass workers employed at the Eagle and believe they are generally well satisfied with their work and their wages and their working conditions. I would be very sorry to see the factory unionized. I have signed one of the employment cards in use by the Eagle under which I have agreed not to join the union while working for the Eagle, while the Eagle has agreed with me that it will run non-union while I am working for it. The present agitation which has been going on through the efforts of Gillooly to unionize the men and factory has created a spirit of unrest which I would be glad to see stopped. My employers treat me well and that is the general feeling of the people who are employed at the Eagle. On steady work I average six dollars a day. I am not a member of the American Flint Glass Workers' Union and never was.

I have read the article in The Wheeling Majority of Thursday, July 31, 1913, wherein Gillooly is said to have stated that the conditions prevailing at the Eagle glass factory and the stamping works, run in connection, make the place practically a slave pen. That is untrue. He also says that the men are not paid if they work bad glass. That is untrue. I know as a glass blower that when we work bad glass and make it known we are paid day wages, \$4.00 a day.

I make the present affidavit for use before the court in support of any motion or of any pleading in which its subject matter is properly usable.

HOMER A. SCOTT.

(Two originals executed.)

69 Taken, sworn to and subscribed before me this 4th day of August, 1913.

[NOTARIAL SEAL.]

J. A. GIST,
Notary Public within and for Brooke
County, West Virginia.

My commission expires July 1, 1919.

Affidavit of John O. Fisher.

(Filed Oct. 27, 1913.)

No. 77. In Equity.

EAGLE GLASS AND MANUFACTURING COMPANY, Plaintiff,

v.

THOMAS W. ROWE et als., Defendants.

John O. Fisher, being first duly sworn on his solemn oath, says: My name is John O. Fisher; age, fifty-one; residence, Wellsburg, West Virginia; occupation, manager of the Eagle Glass and Manufacturing Company's glass factory at Wellsburg, the plaintiff company in this suit. I have held that position for the last seven years. We have from one hundred and fifty to two hundred employes in the glass department, excluding the decorating department; and including the decorating department the number would be about two hundred and twenty-five. There has never been a strike or any labor trouble at the Eagle plant since I have been here, but there was some effort to unionize the factory about four years ago. That effort was made by the American Flint Glass Workers' Union, Joseph O'Malley being the organizer. Joseph O'Malley's picture appears on page 3 of a copy of the American Flint, the official magazine of the organization issued June, 1913, and being number eight of volume four, a copy of which is exhibited with the bill. For the last two months or thereabouts the American Flint Glass Workers' Union has been making another effort to unionize the Eagle factory, and this time they have an organizer on the ground by the name of Joseph Gillooly. I have seen Gillooly but never have talked with him. Gillooly has talked with many of our employes who are glass workers, has endeavored to get them to join the union, and in trying to bring that about has made statements to the men calculated to create dissatisfaction in their minds with the Eagle Company and with the work they are engaged to do at the Eagle plant. I know this from statements made to me by the men themselves, glass workers of ours, with whom Gillooly has talked. Through his efforts Gillooly has striven to create unrest on the part of our employes and to some extent has succeeded. According to my information derived from the men who have talked with him and then talked with me he has been more successful than I had imagined he could be, but time will only tell whether he has been as successful as he tries to make out. Believing that

it was only the part of prudence to seek protection against the efforts that Gillooly is making the company entered into a special contract with its employes whereby they agreed that they were not members of the American Flint Glass Workers' Union and would not become so while employed by us, and we agreed that while they were employed with us we would run our factory non-union. We have tried and are trying to live up to our agreement. We have sought to injunction in this case in order to enable us to fulfill our part of the bargain with our own employes. In spite, however, of our efforts in this line, we are advised and I say this on information and belief that efforts are still being made to bring about the unionizing of our plant. One of the latest statements of Gillooly publicly made which has come to my notice is what in the issue of the Wheeling Majority of July 31, 1913, he is reported to have said relative to the conditions prevailing at the Eagle glass factory and the stamping works run in connection and which conditions he is reported to have said make the place practically a slave pen; and in the same article Gillooly is reported to have made other statements relative to the wages paid the employed and as to other matters which are untrue. As a matter of fact the conditions prevailing at the Eagle plant are of the best and the wages paid are as much as union wages as a whole according to my information as to what the union scale is. We have no complaints on that score. In this article Gillooly says: "In addition to this the company maintains a vicious apprentice system by which the men are docked twenty-five per cent. while learning so that a gathering boy receives but \$1.50 and a machine man \$2.25, and a blower \$3.00." As a matter of fact there are no apprentices learning to be machine men and learning to be blowers. Apprenticeship in our factory applies to gathering boys only. We pay our apprentices for gathering for the first year of their service seventy-five per cent. of the full 171 journeyman's price for gathering. While a boy is learning as an apprentice he holds the whole shop back and therefore for the first year we pay him only seventy-five per cent. of the journeyman's price. We pay the apprentice, however, all we agree to pay for the first year and we do not dock him at all. We do not make the men work for nothing on bad glass. If at any time we insist on the men working when the glass is bad we pay them day work, or turn work, which is never less than four dollars a day and is sometimes five dollars and six dollars a day, according to the kind of ware. In explanation of this matter of working bad glass I would say that sometimes, for example, this opal glass, there will be streaks in it of dark color and when a man reports to me that the glass is bad I examine it and if I think it is not too bad I tell the man to go ahead and that if he does not make out the price on the ware that we will pay him turn work, by which he will get the turn work price per day on the kind of ware he is making then. By this he will make four dollars, five dollars, or six dollars, according as he makes one kind of ware or another kind.

In the matter of raising wages since Mr. Gillooly came and which he says was due to the wish of the company to prevent the plant from

being unionized I would say that for some months past, long before Mr. Gillooly came, there was a shortage of labor in industries generally in this locality, and to offset that increases were general in the various industries in and about Wellsburg. We started to increase the wages of our employes before Mr. Gillooly came, and following increases which had been made to some of our employes before Gillooly came we continued the advance and increased the wages of others of our employers after Gillooly came; but the presence of Gillooly and his efforts at unionizing our plant had nothing in the world whatever to do with the increases of wages which we made, and those increases of wages had been decided upon before he came, were carried out regardless of his coming and regardless of his being here, and would have been made anyhow.

I make the article referred to in the Wheeling Majority of Thursday, July 31, 1913, in which Gillooly makes the statement I have commented upon in this affidavit, a part of this affidavit and file marked Exhibit "A" to this affidavit a copy of the Wheeling Majority of Thursday, July 31, 1913, which contains the article and statement of Gillooly objected to under the heading "Dayton Grants Injunction against Flint Glass Workers" as it appears on page 1 and on page 8 of that paper.

I make the present affidavit for use before the court in support of any motion or of any pleading in which its subject matter is properly usable.

JOHN O. FISHER.

(Two originals executed.)

Taken, sworn to and subscribed before me this 4th day of August, 1913.

[NOTARIAL SEAL.]

J. A. GIST,

*Notary Public in, for and of Brooke
County, West Virginia.*

My commission expires July 1, 1919.

EXHIBIT A WITH AFFIDAVIT JOHN O. FISHER.

(Filed Oct. 27, 1913.)

(The original of this newspaper exhibit is transmitted to the United States Circuit Court of Appeals.—Clerk.)

Affidavit of Viola Durig.

(Filed Oct. 27, 1913.)

In Equity. No. 77.

EAGLE GLASS AND MANUFACTURING COMPANY, Plaintiff,
vs.

THOMAS W. ROWE and Others.

My name is Viola Durig; my residence, Wellsburg, W. Va., and my age thirty-seven years. I have lived in Wellsburg at three dif-

ferent periods of time. During my present residence I have lived here for the last six years. I suppose I have lived here altogether about eight years; on one time I lived here about four months and at another time about a year or a little more. I lived here at the time of the explosion which occurred during the strike at the Eagle Glass and Manufacturing Company about thirteen years ago. That strike was in 1900, and was occasioned by efforts of the American Flint Glass Workers' Union to unionize that factory.

I have had four of my children work for the Eagle Glass and Manufacturing Company, the plaintiff in the case mentioned in 173 the caption. One of my daughters worked in the decorating department for about five years and a half and up to the time when she got married. She was my oldest daughter. I have two other daughters who are now working for the Eagle Company in the decorating department. One of them has worked for the Eagle six years and the other three years. I have also a boy, whose name is Ira, and his age is sixteen the first day of January next. He is now working for the Eagle and has worked for it for about the last year and a half. He makes the glass ball on the pipe which is handed to the blower. My boy had been going to school but I found it necessary to put him to work and I got him a job at the Eagle, having first obtained the necessary permission from the school authorities.

Mr. Harry Pratt called me up over the telephone on last Friday, September 5th, 1913, and told me that Mr. Gillooly was coming up to have a talk with me in regard to the boy, Ira. He came up in the evening with Mr. Pratt. After he was admitted to the house he asked in regard to my son working at the Eagle Glass Works and offered to give me six dollars a week to take the boy from the factory, stating that he could make so much more in a union factory. And I gave him the statement that I wouldn't take the boy from the factory, and I told him not even for six times six dollars a week. Then he asked me what I would do if the men came out, and I told him they hadn't come out yet. He asked me if I thought they were not coming out, and I told him I did not, and at least I hoped not. He asked me if I didn't think it was for the boy's good to take him out, and I told him, no, sir, I had control of the boy, and that I was looking after that part myself, and further warned him not to interfere with the boy in any way. He told me that he would give him the six dollars and that he could go elsewhere and work, spoke of his getting work in a union factory, and that they would still pay him the six dollars. I told him that he was talking to the wrong person. He asked me if I didn't think it was better for the boy to go, and I told him, no, sir, I was looking after the boy and that I needed no interference from him whatever. I told him that I didn't want the boy to go away from home and he said he could place him in the Jefferson, a union factory at Follansbee, and I told him that I was satisfied with him where he was at, that I did not want him or any of his followers to interfere. He again asked me what I would do with the boy if the men came out, and I told him I was not answering

74 that, that the men had not come out yet and that I did not think that they would. He said there was a difference of opinion between he and I, as he thought they were coming out, and also said when they called them that they would call girls and all, and I told him not to interfere any further with my business, that I was satisfied with the work and that he would have to be. During this talk Mr. Gillooly told me that they had won out in that suit the Eagle Company had brought and he said it was proved here that the men were compelled to work over there, that they had to sign a contract to stay there to work. I told him I did not believe that, that if they did it was their fault and not the fault of the company.

Before he left he said that he didn't want any misunderstanding and didn't want this to go to the community nor to the company that he had tried to compel me to take the boy from the factory.

I have my home here and I have always been treated fair by the company. I want the boy and the girls to still work at the Eagle in order to assist me in paying for our home. I built the home we live in and we have been all working together to pay for it.

I make the present affidavit for use before the court in support of any motion or of any pleading in which the subject matter is properly usable.

VIOLA DURIG.

(Two originals executed.)

Taken, sworn to and subscribed before me this 10th day of September, 1913.

[NOTARIAL SEAL] J. A. GIST,
Notary Public within and for Brooke
County, West Virginia.

My commission expires July 1, 1919.

Affidavit of William J. Bell.

(Filed Oct. 27, 1913.)

In Equity. No. 77.

EAGLE GLASS AND MANUFACTURING COMPANY, Plaintiff,
vs.
THOMAS W. ROWE and Others.

William J. Bell, being first duly sworn upon his oath,

says:

175 My name is William J. Bell; I live at 100 Twenty-fifth street, Wellsburg, W. Va.; my age is twenty-nine years and my occupation, glass blower. I now am employed as a glass blower by the Eagle Glass and Manufacturing Company and work as a glass blower for that company at its plant in Wellsburg. I learned my trade as a glass blower at the Eagle Glass Works and in all I worked

there for about thirteen years last past in one capacity or another. I started to work there by carrying in, then held mold, then I gathered, pressed, and then blowed.

I am acquainted with Joseph Gillooly. About two weeks or so after Joseph Gillooly came to Wellsburg to try to unionize the Eagle Glass Works, he came to my house one afternoon by himself and introduced himself, telling me his name and that he was an organizer for the American Flint Glass Workers' Union and that he had come to Wellsburg to unionize the Eagle Glass Works. He came about three o'clock in the afternoon and as I was working night turn and had to go to work at half past five, he did not stay over a half an hour, I think, but said that he would come back and see me again. He told me in his talk that he wanted to let the men join the union and said that if he could get them all in that he would have no trouble in getting the company to agree to run union. I told him that I was satisfied with my work and with the company running its business as it was non-union, and following that statement of mine Gillooly said he would see me again. He did not call at my house again, and he has not talked with me since except just to speak to me on the street as we would happen to meet. I don't think I spoke to him on the street more than three or four times.

I received by United States mail through a delivery by the carrier at my house on September 2d, 1913, a letter signed "Joseph Gillooly," dated at Wellsburg, Sept. 1, 1913, addressed to me at my residence 100 Twenty-fifth street, Wellsburg, W. Va., and relating to a meeting of men employed at the Eagle Glass Company to be held in Exner's Hall in Follansbee Tuesday night, September 2nd, at 7:30 P. M., as shown by the letter itself which is herewith filed attached hereto and made part hereof and marked Exhibit No. 1 with this affidavit. I also file as a part of this affidavit the envelope marked Exhibit No. —, which envelope is that in which the letter referred to was enclosed and in which the letter reached me through the United States mail. I did not attend this meeting.

176 I make the present affidavit for use before the court in support of any motion or of any pleading in which the subject matter is properly usable.

WILLIAM J. BELL.

(Two originals executed.)

Taken, sworn to and subscribed before me this 10th day of September, 1913.

[NOTARIAL SEAL.]

J. A. GIST,

*Notary Public within and for Brooke
County, West Virginia.*

My commission expires July 1, 1919.

EXHIBIT No. 1 WITH AFFIDAVIT WILLIAM J. BELL.

(Filed Oct. 27, 1913.)

American Flint Glass Workers' Union.

N. H. of A. F. G. W. U. of North America.

Organized July 1st, 1878.

(Emblems.)

T. W. Rowe, President; Wm. J. Croke, Vice-President; Wm. P. Clarke, Sec'y-Treas.; D. J. McGrail, Ass't Sec'y; Joseph Gillooly, Organizer.

Rooms 928-929-930-931-932 Ohio Building, Madison Avenue and Superior Street.

Bell Phone, Main 636; Home Phone, 6716.

(Union Label.)

Affiliated to The American Federation of Labor.

WELLSBURG, W. VA., Sept. 1, 1913.

Mr. Wm. Bell, 100 25th St., Wellsburg, W. Va.

DEAR SIR: There will be a meeting of the men employed at the Eagle Glass Co. held in Exner's hall at Follansbee Tuesday night Sept. 2nd at 7.30 P. M. and I hope that you will be present at the meeting as business of importance will be discussed at the meeting. Hoping to see you on Tuesday night and with good wishes I am

Truly Yours

JOSEPH GILLOOLY,
Box 43, Wellsburg, W. Va.

EXHIBIT NO. 2 WITH AFFIDAVIT WILLIAM J. BELL.

(Filed Oct. 27, 1913.)

Wellsburg

Sept. 2

7-A. M.

1913

W. Va.

(Stamp)

Mr. Wm. Bell

100 25th St

Wellsburg

W Va

Second Affidavit of Homer A. Scott.

(Filed Oct. 27, 1913.)

No. 77. In Equity.

EAGLE GLASS AND MANUFACTURING COMPANY, Plaintiff,

vs.

THOMAS W. ROWE et als., Defendants.

Homer A. Scott, being first duly sworn on his solemn oath, says:

I am the same Homer A. Scott who made an affidavit in this case under date of August 4, 1913.

On Monday evening, September 1, 1913, between 6 and 8 o'clock, or after supper and before dark on that day, I was walking along Charles street between Sixth street and Seventh street, in Wellsburg, West Virginia, when Joseph Gillooly came over and stopped me. This Joseph Gillooly is the same Joseph Gillooly that I referred to in my other affidavit. When Gillooly stopped me he told me that there was going to be a meeting at Follansbee the next evening, Tuesday, September 2d, for the purpose of enabling the union to

present its side of the case. He said the Eagle men had only
178 heard one side of the case, the side of the Eagle, and that he wanted the men to hear the union's side. I think his language was "our side of the case." He said that he had mailed me an invitation and asked me to be there. I told him that I thought maybe I would be there—that I would try.

The next day when I went home to dinner I found a letter there for me from Joseph Gillooly inviting me to attend the meeting that he had spoken to me about on Monday night. I identify the letter and the envelope in which it was received, and the letter and the envelope are herewith filed as a part of this affidavit marked Exhibit No. 1 and Exhibit No. 2 respectively.

I went to this meeting on the night of Tuesday, September 2, 1913. It was held at Exner's hall in Follansbee. There were only

twelve or fourteen persons there, seven of whom including myself were employes of the Eagle. I do not want to give the names of the other employes of the Eagle who were there. We were in the hall for about an hour, I think, and the meeting was over by about twenty minutes of nine. The meeting was not called to order, but before we left the hall, which was about twenty minutes of nine, Mr. Gillooly said that the meeting would be postponed until some other time on account of there not being enough there so as to make it worth while to call the meeting to order.

No date for the holding of the adjourned meeting was given at the time we left the hall, but I have heard that another meeting was called to be held Monday, September 15, 1913. If one was called I did not receive an invitation to it. I have seen Mr. Gillooly on the street since seeing him at that meeting on the night of September 2, 1913, but have not talked with him. I last saw Mr. Gillooly in Wellsburg on Saturday afternoon, September 20, 1913.

I make the present affidavit for use before the court in support of any motion or of any pleading in which its subject matter is properly usable.

HOMER A. SCOTT.

(Two originals executed.)

Taken, sworn to and subscribed before me this twenty-second day of September, 1913.

[NOTARIAL SEAL.]

A. WEIDEBUSCH,
Notary Public Within and for Ohio
County, West Virginia.

My commission expires Nov. 6, 1919.

179 EXHIBIT No. 1 WITH SECOND AFFIDAVIT HOMER A. SCOTT.

(Filed Oct. 27, 1913.)

American Flint Glass Workers' Union.

N. H. of A. F. G. U. of North America.

Organized July 1st, 1878.

(Emblems.)

T. W. Rowe, President; Wm. J. Croke, Vice-President; Wm. P. Clarke, Sec'y-Treas.; D. J. McGrail, Ass't Sec'y; Joseph Gillooly, Organizer.

Rooms 928-929-930-931-932 Ohio Building, Madison Avenue and Superior Street.

Bell Phone, Main 636; Home Phone, 6716.

(Union Label.)

Affiliated to The American Federation of Labor.

WELLSBURG, W. VA., Sept. 1, 1913.

Mr. Homer Scott, 24th St., Wellsburg, W. Va.

DEAR SIR: There will be a meeting of the men employed at the Eagle Glass Co. on Tuesday night Sept 2nd at Exners Hall in Follansbee W Va at half past seven oclock. I trust that you will favor us by being present at same as business of importance will come up for discussion Hoping to see you at the meeting and with good Wishes I am

Truly Yours

JOSEPH GILLOOLY,
Box 43, Wellsburg, W. Va.

180 EXHIBIT NO. 2 WITH SECOND AFFIDAVIT HOMER A. SCOTT.

(Filed Oct. 27, 1913.)

Wellsburg

Sep. 2

7 AM

1913

W. Va.

(Stamp)

Mr. Homer Scott

24th St

Wellsburg W Va

Affidavit of David W. Baird.

(Filed Oct. 27, 1913.)

In Equity. No. 77.

EAGLE GLASS AND MANUFACTURING COMPANY

vs.

THOMAS W. ROWE et als.

David W. Faird, being first duly sworn upon his oath, says:

My name is David W. Baird. I live at No. 34 Virginia avenue, Wheeling, West Virginia. My age is fifty-seven years past, and my present occupation is clerk in the Eagle Glass and Manufacturing Company's office at Wellsburg, West Virginia.

I am acquainted with Joseph Gillooly. On Saturday afternoon, September 27, 1913, I was accosted while on the west side of Main street, near Eleventh street, in Wheeling, West Virginia, by Joseph Gillooly. I was passing along the street and he called to me and I stopped and he approached me and shook hands with me. I asked him what he was doing in Wheeling, and he stated he was down for a few days and was going to see his mother in Bridgeport, and in the conversation the matter of the injunction in the Eagle case was brought up and Mr. Gillooly stated he had gotten a letter from Mr. Howard, who had heard from Judge Dayton, that he had been asked

by Howard to desist until after October 8th, but that it wouldn't amount to anything and that after October 8th he would be back up there, at Wellsburg, on the job again.

I know that this is the same Joseph Gillooly who was a party to the Eagle suit in the Federal Court at Philippi and that he is the same person who was in Wellsburg trying to unionize the Eagle employees and is one of the parties who is mentioned in the restraining order in that case.

I make the present affidavit for use before the court in support of

any motion of *of* any pleading in which its subject matter is properly usable.

D. W. BAIRD.

(Two originals executed.)

Taken, sworn to and subscribed before me this sixth day of October, 1913.

[NOTARIAL SEAL.]

A. H. WEIDEBUSCH,
*Notary Public Within and for Ohio
County, West Virginia.*

My commission expires Nov. 6, 1919.

Fourth Affidavit of Charles B. Ott.

(Filed Oct. 27, 1913.)

In Equity. No. 77.

EAGLE GLASS AND MANUFACTURING COMPANY, Plaintiff,
vs.
THOMAS W. ROWE et als, Defendant.

Affidavit of Chas. B. Ott.

I, Chas. B. Ott, the undersigned affiant, being first duly sworn upon my oath in Ohio county, West Virginia, say:

This affidavit is made by me for the purpose of being read by the court in the matter of the hearing upon a certain bill in equity filed in the District Court of the United States for the Northern District of West Virginia, in open court, at Philippi, on July 28, 1913, wherein the Eagle Glass and Manufacturing Company is plaintiff and Thomas W. Rowe and others are defendants, and upon the filing of which bill in said court on July 28, 1913, a restraining order was issued by the court enjoining and restraining the defendants named in the said bill and in the said restraining order from doing certain acts according to the relief prayed for by said bill, and which restraining order was by an order of this court entered on the sixth day of August, 1913, continued in full force and effect until the further order of the court, and which restraining order is now in full force and effect.

Reference is here made by me to said bill and to said restraining order and to the said order continuing said restraining order, and for all proper purposes they are each made a part of this affidavit.

I have made three other affidavits in this suit, two of them being filed in said cause at Philippi on July 28, 1913, and one other affidavit which bears date August 2, 1913, and is to be filed in this suit.

I refer to each one of those three affidavits, reaffirm the statements therein made in each of them, say they are each and all true, and

make them a part of this affidavit the same and as fully as if again set forth in so many words herein.

Joseph Gillooly was served in my presence by a deputy United States Marshal in Wellsburg, West Virginia, on the twenty-ninth day of July, 1913, with a copy of the summons to answer the bill in this case and with a copy of the restraining order issued in this case on the twenty-eighth day of July, 1913, the same day the bill in the case was filed.

From the time Joseph Gillooly was served with the papers mentioned on the twenty-ninth day of July, 1913, until shortly after the twenty-fourth day of September, 1913, Joseph Gillooly continued to stay in Wellsburg and continued his efforts in trying to unionize the employes of the Eagle company just as he had been doing prior to the filing of the bill and the issuing of the restraining order on July 28, 1913; and this last statement is made by me in part from my own personal knowledge and in part from information received by me from others associated with me in the operation and management of the Eagle Glass and Manufacturing Company's works at Wellsburg. It may be that Gillooly was occasionally away during that period of time, but from my own personal knowledge, coupled with the information given me by associates in the business, before referred to, I can say that Gillooly ignored the restraining order and continued his work the same as if no order had been made.

Shortly after the twenty-fourth day of September, 1913, Joseph Gillooly left Wellsburg, and for the time being suspended his efforts there in trying to unionize the employes of the Eagle company, but I am informed and believe and now allege upon such information and belief that said Joseph Gillooly has recently stated that he is not bound by the restraining order and that he intends to return to Wellsburg and would be there on November 3, 1913, for the purpose of resuming his efforts to organize the employes of the Eagle Glass and Manufacturing Company at Wellsburg.

I make the present affidavit for use before the court in support of any motion or of any pleading in which its subject matter is properly usable.

CHAS. B. OTT.

(Two originals executed.)

Taken, sworn to and subscribed before me this 25th day of October, 1913.

[NOTARIAL SEAL.]

A. H. WEIDEBUSCH,
Notary Public in, for and of Ohio
County, West Virginia.

My commission expires Nov. 6, 1919.

Second Affidavit of Wm. J. Bell.

(Filed Oct. 27, 1913.)

In Equity. No. 77.

EAGLE GLASS AND MANUFACTURING COMPANY
VS.

THOMAS W. ROWE and Others.

William J. Bell, being first duly sworn upon his oath, says:

My name is William J. Bell; I live at 100 25th street, Wellsburg, West Virginia; my age is 29 years; and my occupation glass blower. I am now employed as a glass blower by the Eagle Glass and Manufacturing Company and work as a glass blower for that company at its plant in Wellsburg. I learned my trade as a glass blower at the Eagle glass works, and in all I have worked there for about thirteen years last past in one capacity or another. Under date of September 10, 1913, I made an affidavit to be filed in this case, and this is my second affidavit in the same case.

I have continued working as a glass blower for the Eagle Glass and Manufacturing Company at its glass works at Wellsburg since the date of that other affidavit, September 10, 1913.

184 On September 13, 1913, I received by United States mail through a delivery by the carrier at my house on that day a letter signed "Joseph Gillooly," dated at Wellsburg, W. Va., Sept. 12, 1913, addressed to me at my residence, 100 25th street, Wellsburg, West Va., asking me to be present at a meeting to be held Monday night, September 15th, at eight o'clock, in Exners Hall, in Follansbee, W. Va., as shown by the letter itself, which is herewith filed, attached hereto, and made part hereof, and marked Exhibit No. 1 with this affidavit. I also file as a part of this affidavit the envelope, marked Exhibit No. 2, which envelope is that in which the letter referred to was enclosed and in which the letter reached me through the United States mail. I did not attend this meeting.

On September 24, 1913, I received by United States mail through a delivery by the carrier at my house on that day a letter signed "Joseph Gillooly," dated at Wellsburg, W. Va., Sept. 23, 1913, addressed to me at my residence, 100 25th street, Wellsburg, West Va., asking me to be present at another meeting to be held Thursday night, September 25th, in Exners Hall, Follansbee, as shown by the letter itself, which is herewith filed, attached hereto and made part thereof, and marked Exhibit No. 3 with this affidavit. I also file as a part of this affidavit the envelope, marked Exhibit No. 4, which envelope is that in which the letter referred to was enclosed and in which the letter reached me through the United States mail. I did not attend this meeting.

I make the present affidavit for use before the court in support of any motion or of any pleading in which its subject matter is properly usable.

WILLIAM J. BELL.

(Two originals executed.)

Taken, sworn to and subscribed before me this 27th day of October, 1913.

[NOTARIAL SEAL.]

A. H. WEIDEBUSCH,
*Notary Public within and for Ohio
County, West Virginia.*

My commission expires Nov. 6, 1919.

85 EXHIBIT No. 1 WITH SECOND AFFIDAVIT WM. J. BELL.

(Filed Oct. 27, 1913.)

American Flint Glass Workers' Union.

N. H. of A. F. G. W. U. of North America.

Organized July 1st, 1878.

(Emblems.)

T. W. Rowe, President; Wm. J. Croke, Vice-President; Wm. P. Clarke, Sec'y-Treas.; D. J. McGrail, Ass't Sec'y; Joseph Gillooly, Organizer.

Rooms 928-929-930-931-932 Ohio Building, Madison Avenue and Superior Street.

Bell Phone, Main 636; Home Phone, 6716.

(Union Label.)

Affiliated to The American Federation of Labor.

WELLSBURG, W. VA., Sept. 12, 1913.

Mr. Wm. Bell, 100 25th St., Wellsburg, W. Va.

DEAR SIR: We will hold a meeting on Monday Night Sept. 15 at Eight o'clock in Exner's Hall in Follansbee, W. Va., and I trust that you will favor us by being present at same.

Truly Yours,

JOSEPH GILLOOLY,
Box 43, Wellsburg, W. Va.

186 EXHIBIT NO. 2 WITH SECOND AFFIDAVIT W. J. BELL.

(Filed Oct. 27, 1913.)

Wellsburg
 Sept. 13
 3 PM
 1913 (Stamp)
 W. Va.

Mr. Wm. Bell,
 100 25th St.
 Wellsburg, W. Va.

EXHIBIT NO. 3 WITH SECOND AFFIDAVIT W. J. BELL.

(Filed Oct. 27, 1913.)

American Flint Glass Workers' Union.

N. H. of A. F. G. W. U. of North America.

Organized July 1st, 1878.

(Emblems.)

T. W. Rowe, President; Wm. J. Croke, Vice-President; Wm. P. Clarke, Sec'y-Treas.; D. J. McGrail, Ass't Sec'y; Joseph Gillooly, Organizer.

Rooms 928-929-930-931-932 Ohio Building, Madison Avenue and Superior Street.

Bell Phone, Main 636; Home Phone, 6716.

(Union Label.)

Affiliated to The American Federation of Labor.

WELLSBURG, W. Va., Sept. 23, 1913.

Mr. Wm. Bell.

DEAR SIR: We will hold another meeting Thursday night Sept. 25 in Exners hall. Follansbee, and I trust that you will make it a point to be in attendance at same.

Trule Yours,

JOSEPH GILLOOLY.

7 EXHIBIT No. 4 WITH SECOND AFFIDAVIT OF W. J. BELL.

(Filed Oct. 27, 1913.)

Wellsburg
Sept. 24
7 AM
1913 (Stamp)
W. Va.

Mr. Wm. Bell,
100 25th St.
City.

Plaintiff's Motion to Strike Out Howard's Motion.

(Filed Oct. 27, 1913.)

In Equity. No. 77.

EAGLE GLASS AND MANUFACTURING COMPANY

vs.

THOMAS W. ROWE et als.

Now comes the plaintiff and moves to strike out the written motion filed in this cause on the eighth day of October, 1913, by John A. Howard, an attorney practicing in this court, as shown by an order filing said motion in this cause entered on the eighth day of October, 1913, as aforesaid, and which written motion has upon its face as a part of its caption the words, "Motion to correct appearance docket," signed by said John A. Howard in his own proper handwriting, and has below his signature the words, "An attorney practicing in the said Court and appearing for himself for the purpose of making said motion."

The ground of this motion is that said John A. Howard is not a party to this cause and has no right to make the application to correct the appearance docket by striking out the entry made therein on August 1, 1913, by which the name of the said John A. Howard is entered as appearing for all of the defendants, and to make the said entry show that his appearance was for the defendant, Joseph Gillooly, only.

Plaintiff says that it is not competent for said John A. Howard as an attorney practicing in this court and appearing for himself for the purpose of making said motion to effect the object of said motion as stated therein and above, and avers that only the defendants themselves, namely, Thomas W. Rowe, William J. Croke, William P. Clarke and D. J. McGrail, individually, and in their respective official capacities, according as they are named defendants in this suit, may severally raise the question sought to be presented to this court by said written motion.

And plaintiff further moves to strike the affidavit of said John

A. Howard, filed by him in this cause on the eighth day of October, 1913, in support of his said written motion to correct the appearance docket in this matter aforesaid, as shown by the said order filing said affidavit in this cause entered on the eighth day of October, 1913, as aforesaid.

The ground of this motion to strike out the said affidavit of said John A. Howard is that the declarations of an attorney are inadmissible to show the scope of his authority.

GEORGE R. E. GILCHRIST,
Of Counsel for Plaintiff.

Decree Filing Affidavits, etc.

And at another day, to-wit: On the 3d day of November, 1913, the following order was made and entered of record, to-wit:

In Equity. No. 77.

EAGLE GLASS AND MANUFACTURING COMPANY

VS.

THOMAS W. ROWE et al.

This cause came on to be heard at this term at Wheeling on the twenty-seventh day of October, 1913, at 10 o'clock A. M., pursuant to an order entered at Philippi in this cause October 8, 1913, and plaintiff, by counsel, argued and submitted its motion filed September 24, 1913, for a temporary injunction, filing in support of said written motion for said temporary injunction as prayed for in the bill and by said motions and the affidavits of Chas. B. Ott, H. W. Paull, James Paull, Chas. Cusick, George Goldbrandson, Wm. H. Bayless, William Roth, L. E. Yeager, Harden Bucy, Geo. Lucas, John E. Myer, Elmer A. Baker, C. I. Miller, Homer A. Scott, John O. Fisher, Viola Durig, William J. Bell, Homer A. Scott (second affidavit), David W. Baird, Chas. B. Ott (fourth affidavit), 189 William J. Bell (second affidavit). Which motion for a temporary injunction was then argued by Geo. R. E. Gilchrist, of counsel for the plaintiff, there being no appearance for any of the defendants.

The motion of John A. Howard, an attorney practicing in this court, on his own behalf, to correct the appearance docket, heretofore filed, then came on to be heard upon the affidavit of said John A. Howard and the testimony of L. V. G. Morris taken in open court. Plaintiff thereupon, by counsel, filed its motion to strike out the written motion filed by John A. Howard, October 8, 1913, to correct the appearance docket, and plaintiff also by said motion moved to strike out the affidavit of John A. Howard filed by him October 8, 1913, in support of his said motion, which motion of John A. Howard to correct the appearance docket and the motion of the plaintiff to strike out the said motion and affidavit of John A. Howard filed therewith were then argued by Geo. R. E. Gilchrist, of counsel for the plaintiff, and by John A. Howard in his own behalf.

Said George R. E. Gilchrist, of counsel for plaintiff, was given leave to file a brief in support of plaintiff's said motions on or before Thursday, November 6th, 1913, and leave was given to said John A. Howard to reply to plaintiff's brief on the motion to correct the appearance docket and the defendants' motion to strike out said motion, on Saturday, November 8th, 1913.

A stenographic report of all of said proceedings was duly taken at the instance of the plaintiff and under the direction of the court, and all of the matters covered by this order were at the conclusion of said hearing taken under advisement by the court upon the papers filed, testimony taken, and proceedings had as shown by said stenographic report now here filed and made part of the record.

Stenographic Report.

(Filed Nov. 3, 1913.)

EAGLE GLASS AND MANUFACTURING COMPANY

vs.

THOMAS W. ROWE and Others.

Before Honorable Alston G. Dayton, Judge, Wheeling, October 27, 1913.

Present: Geo. R. E. Gilchrist, Esq., on behalf of Eagle Glass & Manufacturing Company; John A. Howard, Esq., attorney, in person.

Stenographic Report.

Be it remembered, that at a session of the District Court of the United States for the Northern District of West Virginia, held in the city of Wheeling, in said district, on Monday, October 27, 1913, the Honorable Alston G. Dayton, judge of the said court, presiding, among others the following proceedings were had:

Mr. Gilchrist: If your honor please—

Mr. Howard: What motion will your honor hear?

The Court: There are two motions, as I understand it: one is made by Mr. Gilchrist for a preliminary injunction upon the record as it stands, and the other is made by you, Mr. Howard, to correct the record as to the appearance docket.

Mr. Gilchrist: And upon the further right reserved to me by the order of October 8th to move to strike out or to take any other action that I may think proper with regard to the motion made by Mr. Howard filed on that date.

Now, if it please your honor, upon the motion for the temporary injunction, it will be my aim to present to you in form simply the motion for the temporary injunction, and, under the rule, to ask for the allowance of a temporary injunction as prayed for by the bill and as supported by the affidavits which I will file.

I now file, therefore, the affidavits of Charles B. Ott, H. W. Paull, James Paull, Charles Cusick, George Goldbrandson, William H. Bayless, William Roth, L. E. Yeager, Harden Buey, George Lucas, John E. Myer, Elmer A. Baker, C. I. Miller, Homer A. Scott, John O. Fisher, Viola Durig, William J. Bell, Homer A. Scott (second affidavit), David W. Baird, Charles B. Ott (fourth affidavit), William J. Bell (second affidavit), and an authenticated copy, under the Federal law, of the certificate of incorporation of the Eagle company.

The Court: Very well; let those affidavits be filed.

191 Mr. Howard: I suppose I will have an opportunity to read them, at least, before we are heard?

Mr. Gilchrist: Certainly.

The Court: You may reply to anything.

Mr. Howard: It seems to me that the motion to correct the appearance docket should be heard first, because if that motion is granted, then, of course, this cannot be granted.

Mr. Gilchrist: I want to read into the record the appearance docket in this cause, and the entry of August 1st, 1913, made by the clerk pursuant to a telegram from Mr. John A. Howard, and—

Mr. Howard: Before that is done: I see confusion here, your honor. Unless these two motions are separated, we will get a record here in which these affidavits are in, and we get a record in which would be the matters pertaining to this motion to correct the appearance docket. There is no reason why on the motion to correct the appearance docket the record should be encumbered with this mass of affidavits on the motion for injunction. These things ought to be separated, so that we will get a record that will not be confusing and have a lot of unnecessary matter in it.

The Court: I don't know, of course, what record either one of you want. I suppose both of you are desirous that this matter shall be set forth in detail upon the record, because whichever way I decide, one or the other will likely appeal. I don't care anything about what is put into the record. I am perfectly willing that both of you shall have everything pertaining to the question in the record, but I suppose if I decide, for example, that the appearance had to hold, Mr. Howard would want all that relating to the appearance from the record, and if I should hold that the appearance docket must be corrected and there has been no appearance, Mr. Gilchrist would want only that portion which relates to that.

Mr. Howard: My point is that these two motions should be heard separately, for the reason that Mr. Gilchrist has now introduced a mass of affidavits relative to his motion for an injunction. Now he is proceeding to introduce matter applicable and relative to the motion to correct the appearance docket. Those things should be separated, or we will have a jumble of irrelevant matter as to both motions.

192 The Court: We are assuming that those affidavits relate alone to the question of the granting of a temporary injunction.

Mr. Howard: Therefore, if we are hearing that, no objection to it.

The Court: I don't know, Mr. Howard, but what they may relate to something touching this correction of the appearance docket.

Mr. Howard: I understand they do not, and counsel, of course, would correct me if I am not right about that. I have not seen them, of course. But isn't it obvious that we are hearing one motion or the other?

The Court: Yes, I think it would be more formal to pass upon this question whether or not there is an appearance here that binds the parties, but at the same time if you want to file these affidavits in support of the other motion now, there is no reason why you should not.

Mr. Howard: If I am right that the affidavits do not apply to the motion to correct the appearance docket, that I object to their being filed upon his hearing on that motion. They should be filed to the motion to which they are applicable and relative.

The Court: Of course they would be considered as to that, but at any time you can file anything in the papers that you want, subject to a motion to reject them afterwards if you so desire or if the other side desire. Now, I understand that these affidavits are asked to be filed. That is as far as I go.

Mr. Howard: I want to be sure that they are asked to be filed upon the motion to correct the appearance docket.

Mr. Gilchrist: No, sir; they are not.

193 The Court: Now let us take up this motion to correct the appearance docket.

Mr. Gilchrist: If your honor please, I submit that I am entitled first to formally put before the court the motion for a temporary injunction inasmuch as there is no appearance here by counsel for these defendants, who, according to the appearance docket and the record of this court, are in court. Mr. Howard seeks to oppose the granting of an injunction against persons whom he now says he does not represent, but who, under the appearance docket of this court, are in court. Now, I apprehend, if your honor will indulge me for a moment, that the record of the court is to stand until it is set aside, and in urging my right to present this motion for a temporary injunction at this time, I seek only to avail myself of such right as I believe the law gives me, and to comply with the new equity rule which requires a party to press his motion for a temporary injunction.

Now, I have filed, in accordance with the equity rule, the motion, and the hearing on that motion has been continued until today, and it is my privilege, I apprehend, to now submit that motion and call up again the hearing of the motion, and add to the bill the affidavits which I have filed. I believe it is also my right, in connection with showing that I have the right to press this motion at this time, to read into the record of this hearing today what will show to be the facts regarding the appearance docket and the appearance that has been entered in this case, and which has not been set aside. Therefore I have asked to read into the record today the entry of the appearance docket, showing the entry that these defendants are in court by an appearance entered by John A. Howard, pursuant to a tele-

gram sent by him to the clerk, dated July 31st, 1913, and entered in due form by the clerk on the appearance docket in this court, and I believe it further is my right to read into the record at this time—and I now ask that that may be done—the original telegram which was received by the clerk of this court from Mr. Howard, upon which the clerk acted in making that entry, and I will ask also to read into the record at this time the original telegram which was filed by Mr. John A. Howard with the Western Union Telegraph Company in Wheeling, which is now in the custody of Mr. H. Young, the general manager of the Western Union Company, and which telegram is now in the possession of Mr. Young, who is here.

194 Mr. Howard: If Mr. Gilchrist will pardon me: This is all a very great waste of time. There is no controversy about the telegram, or the words of it. That I am ready to admit.

The Court: I do not think it is necessary, where there is an agreed state of facts. If you can present that in about a dozen words or a dozen lines or a quarter of a page, instead of making up a record of things that are all admitted, I don't see that there is any benefit in that, Mr. Gilchrist. Still if you want it in the record, I will let it in. The statement made at Clarksburg was that this was all admitted.

Mr. Howard: And if we are hearing, as Mr. Gilchrist seems to be presenting, his motion for an injunction, I am not appearing. That is fully understood. From the beginning, the first time your honor ever heard of this in open court, I announced that I did not appear for these parties. I am not appearing here for them. I am here in court and ready to present my motion to correct that docket, and it looks to me as if it were a very great waste of time of court and counsel to permit Mr. Gilchrist to do what he is seeking to do now—present his motion on the appearance docket as it stands—and afterwards hear the motion to correct that appearance docket. Obviously the proper thing to do is to first hear that motion, your honor, because if that motion is granted, then, of course the other motion cannot be presented; while if you hear Mr. Gilchrist's motion first, you might conclude, upon the case he makes, and that unopposed, that he is entitled to an injunction, and immediately afterwards hear my motion and conclude to correct the appearance docket, and then he would not be entitled to the injunction. It is a waste of time to hear the motion for an injunction first.

The Court: What is worrying me, gentlemen, is: I want to know how far an appearance docket can be corrected and how far persons can be bound by an appearance if the counsel says that his appearance was an inadvertence and that he was not authorized to appear.

Mr. Howard: I think I have Supreme Court authority conclusive upon that.

195 The Court: There is a case in Howard that distinctly says under such circumstances the attorney might be answerable in damages, but that is not a sufficient protection to those parties, and the court will not allow them to be bound by that. That de-

cision was worrying me, and that is what I would like to have some authority upon if contradicted.

Mr. Gilchrist: If your honor please, the case of *Hill vs. Mendenhall*, 21 Wallace, 453 (88 U. S. 22 Law Ed. 616), Mr. Chief Justice Waite, delivering the opinion, says: "When an attorney of a court of record appears in an action for one of the parties, his authority, in the absence of any proof to the contrary, will be presumed. A record which shows such an appearance will bind the party until it is proven that the attorney acted without authority."

Mr. Howard: I think that is good law. I agree with that.

Mr. Gilchrist: I think that justifies the procedure that I have taken in this matter. Now, with regard to the reservation that was made in favor of the plaintiff by the order entered October 8th, with relation to the action that the plaintiff might take upon the written motion to correct the appearance docket filed by Mr. Howard on that day, I now desire to file plaintiff's motion to strike out Mr. Howard's motion, and I will hand Mr. Howard a copy. (Handing copy to Mr. Howard.)

Mr. Howard: I am not parliamentarian enough to know what we do when there is a motion to strike out the motion to strike out.

The Court: This is a court of equity, and we will cut across lots, and we will not have any question as to what the effect of this motion is. It is in regard to your motion made, and this is the reply or objection to it.

Mr. Gilchrist here read: "Plaintiff's motion to strike out written motion filed by John A. Howard, October 8th, 1913, to correct appearance docket, and plaintiff's motion to strike out the affidavit of John A. Howard filed by him October 8th, 1913, in support of his said motion."

196 Mr. Gilchrist: Now, without taking too much time of the court, but to substantiate the grounds named in that motion, I refer the court to the case of *Sambroke vs. Hays*, 4 Law Journal Chancery, 175, a case decided by the Court of Chancery in England in 1835, where it was held: "Where a solicitor by mistake has entered an appearance for a party for whom he is not authorized, the court will not, on the application of the solicitor alone, cancel the appearance." The case is short, and with your honor's permission, I will read it:

"Mr. Wilcox, on the part of the solicitor in the cause, moved that an appearance entered for one of the defendants might be struck out under the following circumstances: The bill was filed against Edward Hays and Henry Hays, and the solicitor had been instructed to enter an appearance for Henry Hays, but his clerk, as it was alleged, had, by mistake, entered an appearance for both defendants. The solicitor now asked to be released from the mistake which he represented as being a mere slip of his clerk."

"Mr. J. Russell, the solicitor, is no party to the cause, and has no right to make the application. If Edward Hays complains of any mistake committed by a solicitor who has no authority to ap-

pear or act for him, he should come here himself, and the court would then relieve him."

"Mr. Wilcox, in reply, said: That the solicitor, being an officer of the court, might make the application, and urged that an attachment might, in consequence of the mistake, issue against Edward Hays, and that if taken under the attachment, the solicitor would be liable under an action at law at the suit of Mr. Hays.

"Mr. Wilcox being asked if he could cite any authority in support of his motion, and answering in the negative, the court refused to entertain an application to take the name of the party off the record on the motion of the solicitor alone. The motion was refused with costs."

Now, I call the court's attention to one other case—the case of *Mallet vs. Girard*, decided in 1840, 3 Edwards Chancery Reports (N. Y.) 372. "A solicitor, who has volunteered an appearance, cannot withdraw it on his own application merely because he says he had no authority; the defendant himself not disavowing the right to appear."

This case is short, too.

"The defendant resided at New Orleans; and the solicitor
197 for the complainant obtained and published the usual order for an appearance. Before the time was out, a solicitor entered an appearance for the defendant, and a copy of the bill, with notice of an order to answer, was served.

"A petition was now presented by the solicitor, asking leave to withdraw his appearance, on the ground that he had been induced to appear from the fact of having been concerned for the defendant in an action at law which embraced the same matter; that he had sent a copy of the bill to the defendant at New Orleans, who, in acknowledging the receipt of it, had remarked that in consequence of all his books, papers and witnesses being in New Orleans, it would be almost impossible for him to make a proper accounting and wished to know whether the law of this state would allow such a bill to be filed in such a case as the present and he be compelled to answer and account in the city of New York; and that he, the solicitor, had appeared without any authority from the defendant.

"Mr. Dillon, in pro. per. and in support of the application.

"Mr. Rapello, contra.

"The Vice-Chancellor denied the motion, on the ground that, although the defendant had received a copy of the bill from the solicitor who had chosen to appear for him, yet he had made no express disavowal of such solicitor's authority, and non constat he would disavow it."

Now, your honor, the case of *Hill vs. Mendenhall* says that the question of want of authority must be presented by the parties and by a proper plea and special plea, and there is nowhere to be found, that I can learn of, any authority which sanctions the proceeding which Mr. Howard has tried to introduce here in this case, and that seems, as your honor will note, to be the result of the examination by other counsel and by other courts.

This filing of a special plea, to raise this question of want of authority, must be done by the party.

The Court: Have you made any examination of the authorities on the question of whether an attorney can appear, so as to have a formal appearance, by word from a telegraph office, and wiring the clerk?

Mr. Gilchrist: Yes, sir.

The Court: If you get down to the absolute technical situation here, there are two questions presented: Whether or not this telegram can be taken as an appearance. There was an appearance in the old English chancery practice—a book kept for the appearance of counsel, for the issuing of a subpoena instituting a suit, and for the proceedings to be taken in the clerk's office. Now, in our modern practice, we do things by telephone and by telegraph. But have you any authority for doing that?

Mr. Gilchrist: Yes, your honor, I have authority, which I may not be able to place my hands on at this moment, because I did not come prepared to anticipate a call for authorities that an attorney might appear by telegram, but I will produce such authority. I have examined that question, and can say to the court that there is such authority.

The Court: That is what I wanted to know. These questions of practice are the most difficult and most perplexing that come to the court, I think. I have thought over this a little myself, but I have waited for offers of counsel and argument in the matter.

Mr. Gilchrist: Now, the question of the method which I say has been held by the Supreme Court in the case of *Hill vs. Mendenhall* to be by special plea, is probably to be modified by equity, rule 29 of the new equity rules, under which the party who seeks relief may come in by motion, but preferably in this case by answer. And with regard to the method of trying the issue then thus presented in a proper manner, the case of *Hatfield vs. King*, from this circuit, is in point. 184 U. S. 162 (46 Law Ed. 481).

There the court discusses the seriousness of an attempt to modify or change the record of the court with regard to appearance, and expressly holds that affidavits are not desirable for such a purpose, being *ex parte*, and that the proper method is for a hearing before the court after the issue is made up, such hearing to be upon direct examination and upon cross examination.

The Court: You have seen the case of *Shelton vs. Tiffin*?

Mr. Gilchrist: Yes. I want to call your honor's attention to the fact that that negatives the very idea that Mr. Howard is seeking to impress upon the court. An examination of that case will show that the party himself sought to be relieved, and the attorney did not. There is no authority, if your honor please, for any such action as Mr. Howard has taken here, and I challenge him to produce any such authority, and in submitting this motion for a temporary injunction, I do it believing that—

Mr. Howard: I object again. I must insist that we bear one of these motions or the other. Which is it now? We have gotten back to the injunction again.

The Court: Just wait one minute. I want to call your attention to one thing before you pass from the question of the authority on this. Now, the syllabus here in this case of Shelton vs. Tiffin shows that this is upon an application for an injunction where a citizen of Virginia sued in the Circuit Court of Louisiana two persons jointly one of whom was a citizen of Louisiana and the other of Missouri, and an attorney appeared for both defendants, and it is held that the citizen of Missouri is at liberty to show that the appearance for him was unauthorized. That is in accord with your view, Mr. Gilchrist?

Mr. Gilchrist: Yes, sir.

The Court: If he shows this, he is not bound by the decisions of the court, and judgment as to him is a nullity.

Now, here, Mr. Howard, the attorney who appears here, comes in this case. The evidence upon which this appearance was set aside was that of the attorney himself, who stated that he had not, in fact, authority, and it was inadvertence that he had appeared.

It is a question of discretion always whether I shall grant an injunction. In this case process was served upon one of the defendants unquestionably, and appearance was had for him in the case, and it turned out that the allegations of the bill were a mistake, and that he was resident of the state of West Virginia, and therefore this court had no jurisdiction. Unless Mr. Howard here was authorized to appear for these other defendants, there has been no service of process had upon them, and I have no authority to issue an injunction in the case, because I have not got jurisdiction of it.

Now, the query comes right to the conscience of the chancellor. If

Mr. Howard says positively here in open court on his oath
200 that he was not authorized, as did his attorney, Crawford, in this case, I am asked to do a thing that I have every reason to suppose will be an absolute nullity, and which I haven't any right to do or ought not to do. I think that is pretty technical, and it is those technical things that I must be careful about. It seems to me that it is clearly apparent that at any time the parties may come in and show that my order was a nullity, and that I had not any jurisdiction, because Mr. Howard had no right to appear. That is the way it looks to me at the present time. I am going to examine it further.

Mr. Gilchrist: Replying briefly only, I want to suggest that the right rests simply with the party and not with the attorney, and that in the case that your honor has before you, which you have just read, Shelton vs. Tiffin, the application was made by the party and not by the attorney. It is true that the attorney was cross-examined upon the application of the party who objected to his appearance. It is true that in that case the court decided under the facts, under the charges made by the party, and under the testimony produced by him—his own and that of his attorney and other testimony—that the attorney was not authorized, but that case is not authority for holding that an attorney may, where the parties themselves do not come into court and deny the authority of the attorney,

represent and get out of court the very people whom he sought, as an officer of the court, to get into court.

The Court: You do not seem to comprehend the angle from which I take it. The granting of an injunction is the exercise of a judicial power, isn't it, Mr. Gilchrist?

Mr. Gilchrist: Yes, your honor.

The Court: The granting of an injunction of this kind is within the sound judicial discretion of the court, who ought to have judicial power. There has been an outcry all over the country against the courts exercising judicial power in granting an injunction, and especially from these labor associations. Now I do not hesitate to grant an injunction to stay their hands when they are doing unlawful things, any more than if it was anybody else. The history of this country shows strike after strike and bloodshed and dynamiting

by these organizations that if the court and law *does* not control, the judges ought to be impeached for not attempting to do it, at least, whether they be state or federal. At

the same time I am asked now by you to exercise this power and grant this injunction on a state of facts disclosed to me that twenty-four hours hence may compel me to set aside and declare it an absolute nullity because there was no proper appearance here, and no proper right for me to exercise jurisdiction over those non-residents out of my district. It is a query as an appeal to the conscience whether I ought not to continue your motion and require you to get better service before exercising that power.

Mr. Gilchrist: Your Honor, just replying once more, and then I will desist: I understand the rule of law to be that in order that a person who is brought into court without authority by an attorney, may be relieved, he must act promptly and apply himself to the court, and that if he does not reply promptly, and, in addition, negative the equity of plaintiff he will not be heard, but his appearance will be retained upon the docket. That same proposition, that the unauthorized appearance of an attorney may be ratified and then bind the party for whom the unauthorized appearance was made, has been affirmed by the Supreme Court of the United States, and it does seem to me that the proceeding here is defective in that the parties themselves, who alone have the right to complain, have not appeared.

Mr. Howard: Your honor, I shall not present any argument, after your honor's indication of the view taken. But I want to introduce into this record the testimony of the clerk on the question of fact. I imagine it will not take over a moment to do that. I think it should appear.

The Court: Well, all right. Do you want the stenographer sworn?

Mr. Howard: Yes.

The stenographer, Louis E. Schrader, was here sworn by the Clerk.

The Court: Of course this is always subject to objection, and subject to a motion to strike out anything improper.

At the request of Mr. Howard, Mr. L. V. G. Morris was called as a witness.

L. V. G. MORRIS, having been first duly sworn, testified as follows:

Q. Mr. Morris, you are deputy clerk of this court?

A. Yes, sir.

Q. You entered in the appearance docket the entry of my appearance for all of the defendants?

A. Yes, sir.

Q. What is the date you made that entry?

A. August 1st, 1913.

Q. And you did it upon what authority?

A. The authority of a telegram.

Mr. Howard: Now the telegram may be read.

The Witness: It is dated Wheeling, West Virginia, received at 4:30 P. M. "31," which means July 31st, for that is the date I received it.

Chas. B. Kefauver, Clerk U. S. Court, Philippi, West Va.:

Send me copy of bill and affidavits in Eagle Glass Co. vs. Rowe and others. Enter my appearance for defendants.

(Signed)

JOHN A. HOWARD."

Q. That is the first of August.

A. This is dated July 31st, and I received it late in the evening, after having gone home from the office—received it at my residence, and made the entry the following morning.

Q. And you wrote me a letter to that effect?

A. That is my recollection that I did.

Q. In what way did I answer that? and what was my answer to you on this matter of your having entered my appearance for all of the defendants? I refer to the conversation between you and me at Clarks-burg, in the morning, before going into court?

A. My recollection is that you asked me what kind of an entry I had made, and I told you that I didn't remember just what it was, but that it was made in accordance with the instructions in the telegram, and then you further stated that you were anxious
203 to know, and said something about the young lady having sent the telegram—you were anxious to know what the young lady had sent in the telegram—something to that effect.

Q. And what upon the subject of my intention—what I intended to be understood, as to whether you were to enter the appearance for one or for all of the defendants?

A. I think you had already stated that you only appeared for Mr. Gillooly. I think you had already made that statement to the court at that time, or to somebody.

Q. Let me remind your, Mr. Morris, that this conversation was in your office before going into the court room, before his honor took the bench.

A. My recollection of it is that it took place just at the left of the judge's bench in the court room.

Q. And before the proceeding commenced, of course?

Q. Before the proceeding began—before the judge took the bench.
 A. Now, *when* when the judge did take the bench, you were present acting as clerk?
 A. Yes, sir.
 Q. Now, what was my announcement to the court as to my appearance, and for whom I appeared?
 A. My recollection is that you announced you appeared only for Gillooly.

Cross-examination.

By Mr. Gilchrist:

Q. Mr. Morris, on what day was this conversation?
 A. On the sixth day of August, the return day of the temporary restraining order.
 Q. And this was at Clarksburg, was it?
 A. Yes, sir.
 Q. And the telegram and the appearance docket were at Philippi, were they?
 A. Yes, sir.

Mr. Gilchrist: I would like to ask Mr. Howard, your honor, whether he would be willing to have now introduced by Mr. Young the original of the telegram which was delivered at the Western Union office in Wheeling.

Mr. Howard: It seems to me utterly unnecessary since it is read to the record by the clerk and admitted to be correct.

The Court: Oh well, I don't think it is necessary, and I don't think it is improper. You may introduce it.

Mr. Gilchrist: I would like to have Mr. Young called and have him produce the telegram.

The Court: Is there anything else you want to introduce, Mr. Howard?

Mr. Howard: No, sir. The affidavit is in.

The Court: Your affidavit?

Mr. Howard: Yes, sir. I have nothing further.

Mr. Gilchrist: I wish to move to exclude Mr. Howard's testimony and his affidavit especially, and refer to the case of *West vs. Messick Lumber Co.*, decided by the Supreme Court of North Carolina in 1905, and reported in 50 S. E. Reporter 565. The fourth point in the syllabus reads as follows: "The declarations of an attorney are inadmissible to show the scope of his authority."

Mr. Howard: There is a world of authorities for that proposition, but that is not involved here.

At the request of Mr. Gilchrist, Mr. HARRY YOUNG, the general manager of the Western Union Telegraph office at Wheeling, was called and came to the bar of the court.

The Court: Mr. Young, have you got that original telegram?

Mr. Young: Yes, sir.

The Court: Do you object to leaving that with the stengorapher?

Mr. Young: I think not; no, sir.

The Court: All right, just pass it over and let it be made part of the record.

Mr. Young here produced the telegram and delivered the same to the stenographer, and the telegram was marked Exhibit No. 1—Harry Young.

The telegram produced by the witness was written with pen upon the letterhead of John A. Howard, attorney at law,
205 Wheeling, W. Va., which was pasted upon a telegraph blank of the Western Union Telegraph Company, the telegram being in the words and figures following:

EXHIBIT No. 1—HARRY YOUNG.

"JULY 31, 1913.

"Chas. B. Kefauver, Clerk United States Court, Philippi, West Va.:

Send me copy of Bill and affidavits in Eagle Glass Co. versus Rowe and others. Enter my appearance for defendants.

JOHN A. HOWARD."

Mr. Gilchrist: I would like to see the telegram.

The paper, marked Exhibit No. 1—Harry Young, was handed to Mr. Gilchrist.

Mr. Gilchrist: It is my claim in this matter that Mr. Howard himself wrote this telegram of July 31st, 1913, and that it is in his own handwriting, and it is further my claim that between the time of sending this telegram and August 6th, when the hearing on a motion for a temporary injunction came up to be heard at Clarksburg, that Mr. Howard had received copies of the bill and the affidavits, and that he, upon appearing at Clarksburg, had the conversation with the clerk and announced to the court that he appeared only for Joseph Gillooly, and that he has not taken, even until this time, nor has his client taken, a proper method to get relief furnished. I ask Mr. Howard if that is not his handwriting?

Mr. Howard: Certainly; there is no question about that. We are having an awful lot of trouble to prove what I have been trying to admit. I want to say this about the case presented to this court, as it stands now:

In July, the last day of July, one of the defendants in this case came to my office and engaged me to represent him, and I telegraphed for copies of the bill and affidavits filed,—the rule served on him showing that certain affidavits had been filed,—on Friday, the first of August, probably mailed on Saturday, the second;
206 Sunday intervening, being the third, and on the fourth there came to me from the clerk, that being Monday, the bill and affidavits, and the bill for the clerk's services. On the fifth, in getting those papers together, my attention being first directed to the

bill, I noticed for the first time that the clerk had advised me that he had entered the appearance for the defendants,—the first time it came to my attention that there was an appearance entered by the clerk, and he advised me of it. Now it was then immediately my duty to correct that with the clerk. Leaving on that evening, to be in Clarksburg on the next morning, the first thing I did was to go to the clerk and correct that,—not to the extent of taking down the appearance docket,—it was not there, but was in Philippi,—but to the extent of noting the fact mentioned in his letter that he had entered the appearance for the defendants when I was only appearing for one of the defendants. Now that was the fault of the inadvertence in the form of the telegram sent him by me,—not his fault,—but it was my duty to correct it, and I did, and I walked immediately into the court, within ten minutes after that occurred, and advised the court that I was appearing for one of the defendants and not for the others, and your honor will remember there was a definite and distinct understanding about the appearance,—so much so that Mr. Gilchrist insisted on my stating it a second time, he insisting on my stating whether I would appear for the one I did appear for, in an official capacity and also as an individual, and your honor must recall that my answer was I appeared for this defendant and appeared generally for him, and that I did not appear for the others. During the proceedings, your honor called my attention to the fact that any mention of what the court might do as to the other defendants could not be heard from me, because I was not appearing for them. So, then, it is clear that the telegram, which was plainly an inadvertence, was promptly corrected with the clerk, and the appearance promptly and clearly made known to the court. Now, then, the proceedings taken by the court that day was based upon the understanding that I appeared for one and not for the others, and your honor so declared from the bench, and your treatment of the case and the action taken was upon the theory that I was not appearing for them. After that was all over and the client I appeared for dismissed,—the bill dismissed as to him, and he stepped out of

207 the case, then, upon this appearance docket, the attempt is made to reopen the case as to the others and bring them into court. Now, I come promptly to the court and not only say that I do not appear for them, that the entry was an inadvertence, but that I have no authority to appear for them.

A word as to how that is to be presented: Your honor is asked to say, "You stuck your foot in the door, and now you can't take it out. The court has got that much of you and will pull you into court," and hold jurisdiction of these parties. That is asking the exercise of a discretion that is more than ought to be asked. It is not a question entirely of my right to appear here, but it is my duty to appear here. The case of *Shelton versus Tiffin*, which your honor mentioned, would make me liable for damages and liable to these parties if I should not appear and correct this inadvertence. There is no occasion for them to appear. They can stand by; they are not in the jurisdiction; they have never been; they can stand off and let your honor do what you please, and you might grant this in-

junction, and somebody else might be brought up on a rule for contempt for violating this injunction, and then your honor will be confronted with the authority, that has not been controverted and cannot be,—the authority of the Supreme Court of the United States, that your action would be a nullity.

Now, how is that going to be heard? Mr. Gilchrist cites *Hatfield vs. King*. He misreads the case. There is nothing in that case relative to this, except that it was held in that case, or was said, at least, in the opinion, that the filing of affidavits was a proper way to present the fact that an appearance without authority had been made by counsel. But the judge writing the opinion in *Hatfield* against *King* took occasion to say that in establishing the fact, it merely being the filing of a lot of affidavits in it, and the gravity of the offense charged against an attorney, who it seems, the court would intimate, appeared without authority for a collusive and improper purpose,—it was such that the court would not take steps to punish the attorney, but intimated that he ought to be. But if there is anything in *Hatfield vs. King*, it is an authority for the proposition that the proper way to present the facts as to appearances is upon affidavits. But here when you hear all of these things you get back to the only case that is in point, and that is *Shelton vs. Tiffin*,

6 Howard. There an attorney appeared, inadvertently he
208 said afterwards, and the court proceeded, and nobody came in and challenged that until there was a decree, and the court was about to sell property. Then the lack of authority upon the part of the attorney was presented, and it was held that it would be an entire nullity. Now what would be the proper exercise of a discretion here except that because of an inadvertence the clerk enters an appearance and is promptly told that that is not the intention,—that is to be corrected,—and then for the first time the counsel appears in court and announces to the court that the appearance is for only one. Would it not be a gross abuse of the court's discretion to hold that to be sufficient authority to bring the parties into court who have not been served with process? The appearance means something more than the appearance. You cannot do anything or enter any order that will be binding or have any effect as to these defendants unless they have been served with process or waived process. Now I say to your honor, as I said promptly at the start, that I was never authorized to waive process, and did not waive process.

Now, what can be done, under those circumstances, when nobody denies that,—can't deny it? What possibility is there for the court to base jurisdiction upon a mere inadvertence in a telegram that is promptly announced to have been an inadvertence?

The Court: Well, gentlemen, I will take it and I will look up these authorities. Let me have the bill and affidavits.

Decree Filing Amended Bill, etc.

And at another day, to-wit: On the 27th day of November, 1913,
the following order was made and entered of record to-wit:

In Equity. No. 77.

AGLE GLASS AND MANUFACTURING COMPANY, a Corporation Organized under and by Virtue of the Laws of the State of West Virginia, a Citizen of said State, Having Its Principal Office at Wellsburg, in said State and District, Plaintiff,

vs.

THOMAS W. ROWE, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually, and as President of the American Flint Glass Workers' Union; William J. Croke, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually, and as Vice-President of the American Flint Glass Workers' Union; William P. Clarke, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually, and as Secretary-Treasurer of the American Flint Glass Workers' Union; D. J. McGrail, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually, and as Assistant Secretary of the American Flint Glass Workers' Union; Peter J. Glasstetter, of Steubenville, Ohio, and a Citizen of the State of Ohio; George H. Ross, of Steubenville, Ohio, and a Citizen of the State of Ohio; William Green, of Steubenville, Ohio, and a Citizen of the State of Ohio; Julius W. Crinky, of Steubenville, Ohio, and a Citizen of the State of Ohio; William E. Sillcox, of Steubenville, Ohio, and a Citizen of the State of Ohio; William Hill, of Steubenville, Ohio, and a Citizen of the State of Ohio; Harry Thompson, of Steubenville, Ohio, and a Citizen of the State of Ohio, and Harry E. Walker, of Steubenville, Ohio, and a Citizen of the State of Ohio, Defendants.

This cause came on to be further heard at this term and
10 plaintiff filed its petition and moved that it have leave to amend its bill by adding Peter J. Glasstetter, of Steubenville, Ohio, and a citizen of the state of Ohio; George H. Ross, of Steubenville, Ohio, and a citizen of the state of Ohio; William Green, of Steubenville, Ohio, and a citizen of the state of Ohio; Julius W. Crinky, of Steubenville, Ohio, and a citizen of the state of Ohio; William E. Sillcox, of Steubenville, Ohio, and a citizen of the state of Ohio; William Hill, of Steubenville, Ohio, and a citizen of the state of Ohio; Harry Thompson, of Steubenville, Ohio, and a citizen of the state of Ohio; and Harry E. Walker, of Steubenville, Ohio, and a citizen of the state of Ohio, as defendants thereto, with proper words to charge them.

Whereupon, it is ordered that the plaintiff have, and it has of course, leave to amend its bill as prayed and moved for.

And plaintiff filed in open court its amended bill adding the said Peter J. Glasstetter, of Steubenville, Ohio, and a citizen of the state of Ohio; George H. Ross, of Steubenville, Ohio, and a citizen of

the state of Ohio; William Green, of Steubenville, Ohio, and a citizen of the state of Ohio; Julius W. Crinkey of Steubenville, Ohio, and a citizen of the state of Ohio; William E. Sillcox, of Steubenville, Ohio, and a citizen of the state of Ohio; William Hill, of Steubenville, Ohio, and a citizen of the state of Ohio; Harry Thompson, of Steubenville, Ohio, and a citizen of the state of Ohio; and Harry E. Walker, of Steubenville, Ohio, and a citizen of the state of Ohio, as defendants thereto without prejudice to the restraining order heretofore granted in this cause against the other defendants.

Process is ordered to be issued on said bill and amended bill.

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Complainant's Petition to File Amended Bill.

(Filed Nov. 27, 1913.)

In Equity. No. 77.

EAGLE GLASS AND MANUFACTURING COMPANY, a Corporation Organized under and by Virtue of the Laws of the State of West Virginia, a Citizen of said State, Having Its Principal Office at Wellsburg, in said State and District, Plaintiff,

vs.

THOMAS W. ROWE, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually, and as President of the American Flint Glass Workers' Union; William J. Croke, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually, and as Vice-President of the American Flint Glass Workers' Union; William P. Clarke, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually, and as Secretary-Treasurer of the American Flint Glass Workers' Union; D. J. McGrail, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually, and as Assistant Secretary of the American Flint Glass Workers' Union, Defendants.

To the Honorable Judge of said Court:

Comes now the plaintiff and files this its petition and motion and says that on the twenty-eighth day of July, 1913, it filed its bills in this court at Philippi against the above-named defendants; that no one of said defendants has responded thereto; and that your petitioner is advised to make Peter J. Glasstetter, of Steubenville, Ohio, and a citizen of the state of Ohio; George H. Ross, of Steubenville, Ohio, and a citizen of the state of Ohio; William Green, of Steubenville, Ohio, and a citizen of the state of Ohio; Julius W. Crinkey, of Steubenville, Ohio, and a citizen of the state of Ohio; William E. Sillcox, of Steubenville, Ohio, and a citizen of the state of Ohio, parties — liam Hill, of Steubenville, Ohio, and a citizen of the state of Ohio; Harry Thompson of Steubenville, Ohio, and a citizen of the state of Ohio; and Harry E. Walker, of Steubenville, Ohio, and a citizen of the state of Ohio, parties in this cause, and to bring them before the court as defendants to this suit.

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our petitioner, therefore, prays the court and moves that it may leave to amend its bill by adding the said Peter J. Glasstetter, Steubenville, Ohio, and a citizen of the state of Ohio; George Ross, of Steubenville, Ohio, and a citizen of the state of Ohio; William Green, of Steubenville, Ohio, and a citizen of the state of Ohio; Julius W. Crinkey, of Steubenville, Ohio, and a citizen of the state of Ohio; William E. Silcox, of Steubenville, Ohio, and a citizen of the state of Ohio; William Hill, of Steubenville, Ohio, and a citizen of the state of Ohio; Harry Thompson, of Steubenville, Ohio, and a citizen of the state of Ohio; and Harry E. Walker, of Steubenville, Ohio, and a citizen of the state of Ohio, as defendants thereto, with proper words to charge them.

And your petitioner will ever pray.

GEORGE R. E. GILCHRIST,

Of Counsel for Plaintiff.

Amended Bill of Complaint.

(Filed Nov. 27, 1913.)

In Equity. No. 77.

GLE GLASS AND MANUFACTURING COMPANY, a Corporation Organized under and by Virtue of the Laws of the State of West Virginia, a Citizen of said State, Having Its Principal Office at Wellsburg, in said State and District, Plaintiff,

vs.

THOMAS W. ROWE, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually, and as President of the American Flint Glass Workers' Union; William J. Croke, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually, and as Vice-President of the American Flint Glass Workers' Union; William P. Clarke, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually, and as Secretary-Treasurer of the American Flint Glass Workers' Union; D. J. McGrail, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually, and as Assistant Secretary of the American Flint Glass Workers' Union; Peter J. Glasstetter, of Steubenville, Ohio, and a Citizen of the State of Ohio; George H. Ross, of Steubenville, Ohio, and a Citizen of the State of Ohio; William Green, of Steubenville, Ohio, and a Citizen of the State of Ohio; Julius W. Crinky, of Steubenville, Ohio, and a Citizen of the State of Ohio; William E. Silcox, of Steubenville, Ohio, and a Citizen of the State of Ohio; William Hill, of Steubenville, Ohio, and a Citizen of the State of Ohio; Harry Thompson, of Steubenville, Ohio, and a Citizen of the State of Ohio, and Harry E. Walker, of Steubenville, Ohio, and a Citizen of the State of Ohio, Defendants,

to the Honorable Judge of the District Court of the United States for the Northern District of West Virginia:

14 Now comes the plaintiff, and by leave of the court, and as of course, amends its bill in the following manner:

First amendment: After the word "Union" on line seven of the second page of the bill insert—

Peter J. Glasstetter, of Steubenville, Ohio, and a citizen of the state of Ohio; George H. Ross, of Steubenville, Ohio, and a citizen of the state of Ohio; William Green, of Steubenville, Ohio, and a citizen of the state of Ohio; Julius W. Crinkey, of Steubenville Ohio, and a citizen of the state of Ohio; William E. Sillico, of Steubenville, Ohio, and a citizen of the state of Ohio; William Hill, of Steubenville, Ohio, and a citizen of the state of Ohio; Harry Thompson, of Steubenville, Ohio, and a citizen of the state of Ohio; and Harry E. Walker, of Steubenville, Ohio, and a citizen of the state of Ohio.

Second amendment: After the word "Union" on line eight of the forty-first page of the bill insert—

that the said defendants Peter J. Glasstetter, George H. Ross, William Green, Julius W. Crinkey, William E. Sillico, William Hill, Harry Thompson and Harry E. Walker are with the said Thomas W. Rowe, William J. Croke, William P. Clarke, D. J. McGrail and Joseph Gillooly members of the said American Flint Glass Workers' Union;

Third amendment: After the word "McGrail" on line thirteen of the forty-first page of the bill insert—

Peter J. Glasstetter, George H. Ross, William Green, Julius W. Crinkey, William E. Sillico, William Hill, Harry Thompson and Harry E. Walker.

Fourth amendment: After the word "McGrail" on line nine of the forty-fourth page of the bill insert—

Peter J. Glasstetter, George H. Ross, William Green, Julius W. Crinkey, William E. Sillico, William Hill, Harry Thompson, Harry E. Walker.

Fifth amendment: That the allegation beginning with the paragraph on line two from the bottom of the forty-sixth page of the bill and ending on line four of the forty-seventh page of the bill be so amended as to read:

Your orator says that the said Thomas W. Rowe, William J. Croke, William P. Clarke and D. J. McGrail, defendants
 215 have with Joseph Gillooly for some years last past been in business such as it is hereby shown they are now engaged in; that they are well acquainted one with the other, and that they constitute a part of certain upper officials of the American Flint Glass Workers' Union, in whose hands the management of the affairs of said union has been centralized; and that the said Peter J. Glasstetter, George H. Ross, William Green, Julius W. Crinkey, William E. Sillico, William Hill, Harry Thompson and Harry E. Walker have as such members of said American Flint Glass Workers' Union with other members of said union created said Rowe, said Croke, said Clarke, said McGrail and said Gillooly their agents as such officers and representatives, and have assisted and are now supporting said Rowe, Croke, Clarke, McGrail and Gillooly in their efforts to unionize plaintiff's employes and to force plaintiff to recognize said American Flint Glass Workers' Union.

Sixth amendment: That the allegation beginning with the paragraph on line fourteen of the forty-ninth page of the bill and ending on line twenty-five of the forty-ninth page of the bill be so amended as to read:

Your orator says that the said Thomas W. Rowe, William J. Croke, William P. Clarke and D. J. McGrail, acting in their several official capacities hereinbefore stated, are representatives of the said American Flint Glass Workers' Union; that the said Thomas W. Rowe, William J. Croke, William P. Clarke, D. J. McGrail, Peter J. Glasstetter, George H. Ross, William Green, Julius W. Crinkey, William E. Sillico, William Hill, Harry Thompson and Harry E. Walker are as members of the said American Flint Glass Workers' Union representatives of said union; that the principal office of the said American Flint Glass Workers' Union is at Toledo, Ohio; that the jurisdiction of this court is invoked on the ground that your orator is resident of the Northern District of West Virginia and a citizen of said state, and that each of the said defendants is a resident of a different state, to-wit: no defendant is a resident of the state of West Virginia, and that the matter in dispute exceeds, exclusive of interest and costs the sum of three thousand dollars.

Seventh amendment: That the allegation beginning with the paragraph on line four of the fifty-second page of the bill and ending with the word "associates" on line fifteen of the fifty-
216 second page of the bill be so amended as to read:

To the end, therefore, that your orator may have that relief which it can only obtain in a court of equity, and that the said defendants may each answer the premises, but not upon oath or affirmation, an answer under oath being hereby expressly waived by your orator, your orator now prays the court that the said Thomas W. Rowe, the said William J. Croke, the said William P. Clarke, the said D. J. McGrail, each individually, and as president, vice-president, secretary-treasurer and assistant secretary, respectively, of the said American Flint Glass Workers' Union, and the said Peter J. Glasstetter, George H. Ross, William Green, Julius W. Crinkey, William E. Sillico, William Hill, Harry Thompson and Harry E. Walker, and each and every of them, their committees, agents, servants, confederates and associates,

Eighth amendment: That the allegation beginning with the paragraph on line one of the fifty-seventh page of the bill and ending with the words, "And your orator will ever pray," on line twenty-four of the fifty-seventh page of the bill, be so amended as to read:

May it please your honor to grant to your orator a writ of subpoena to be directed to the said Thomas W. Rowe, of Toledo, Ohio, and a citizen of the state of Ohio, individually, and as president of the American Flint Glass Workers' Union; William J. Croke, of Toledo, Ohio, and a citizen of the state of Ohio, individually, and as vice-president of the American Flint Glass Workers' Union; William P. Clarke, of Toledo, Ohio, and a citizen of the state of Ohio, individually, and as secretary-treasurer of the American Flint Glass Workers' Union; D. J. McGrail, of Toledo, Ohio, and a citizen of the state of Ohio, individually, and as assistant secretary of the American Flint Glass Workers' Union; Peter J. Glasstetter, of

Steubenville, Ohio, and a citizen of the state of Ohio; George H. Ross, of Steubenville, Ohio, and a citizen of the state of Ohio; William Green, of Steubenville, Ohio, and a citizen of the state of Ohio; Julius W. Crinkey, of Steubenville, Ohio, and a citizen of the state of Ohio; William E. Silcox, of Steubenville, Ohio, and a citizen of the state of Ohio; William Hill, of Steubenville, Ohio, and a citizen of the state of Ohio; Harry Thompson, of Steubenville, Ohio, and a citizen of the state of Ohio; and Harry E. Walker, of Steubenville, Ohio, and a citizen of the state of Ohio; thereby commanding them and each of them individually, and in their respective official capacities as to those who are sued in their official capacities, as hereinbefore stated, at a certain time and under a certain penalty therein to be limited, personally to appear before this honorable court, and then and there full, true, direct and perfect answer make to all and singular the bill, this amended bill and the premises, and to stand, perform and abide by such order, direction and decree as may be made against them, and each of them, individually, and in their said official capacities, in the premises as shall seem meet and agreeable to equity.

And your orator will ever pray.

[CORPORATE SEAL.]

EAGLE GLASS & MANUFACTURING
COMPANY.

By H. W. PAULL, *Its President.*

GEORGE R. E. GILCHRIST,

JOHN C. PALMER, JR.,

Plaintiff's Counsel.

GEORGE R. E. GILCHRIST,

Of Counsel.

STATE OF WEST VIRGINIA,

County of Ohio, to wit:

Personally appeared before the undersigned, a notary public within and for Ohio county, West Virginia, H. W. Paull, who, being first duly sworn, says that he is president of the Eagle Glass and Manufacturing Company, the plaintiff corporation; that he has read the foregoing amended bill of complaint and knows the contents thereof; that as to such matters and things therein as are alleged on information and belief, affiant believes them to be true, and the other matters and things therein stated are true in substance and in fact.

H. W. PAULL.

Sworn to before me and subscribed in my presence this 26 day of November, A. D. 1913.

[NOTARIAL SEAL.]

A. H. WEIDEBUSCH,

Notary Public of, in and for Ohio

County, West Virginia.

My commission expires Nov. 6, 1919.

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Subpœna in Chancery.

(Issued Nov. 27, 1913.)

UNITED STATES OF AMERICA,
Northern District of West Virginia, ss:

The President of the United States of America to the Marshal of the Northern District of West Virginia, Greeting:

You are commanded to summon Thomas W. Rowe, of Toledo, Ohio, and a citizen of the state of Ohio, individually, and as president of the American Flint Glass Workers' Union; William J. Croke, of Toledo, and a citizen of the state of Ohio, individually, and as vice-president of the American Flint Glass Workers' Union; William P. Clarke, of Toledo, Ohio, and a citizen of the state of Ohio, individually, and as secretary-treasurer of the American Flint Glass Workers' Union; D. J. McGrail, of Toledo, Ohio, and a citizen of the state of Ohio, individually, and as assistant secretary of the American Flint Glass Workers' Union; Peter J. Glassetter, of Steubenville, Ohio, and a citizen of the state of Ohio; George H. Ross, of Steubenville, Ohio, and a citizen of the state of Ohio; William Green, of Steubenville, Ohio, and a citizen of the State of Ohio; Julius W. Crinkey, of Steubenville, Ohio, and a citizen of the state of Ohio; William E. Silcox, of Steubenville, Ohio, and a citizen of the state of Ohio; William Hill, of Steubenville, Ohio, and a citizen of the state of Ohio; Harry Thompson, of Steubenville, Ohio, and a citizen of the state of Ohio; and Harry E. Walker, of Steubenville, Ohio, and a citizen of the state of Ohio, if they be found in your district, to be and appear in the District Court of the United States for the Northern District of West Virginia, aforesaid, in the clerk's office of said court, at Philippi, on the 17th day of December, 1913, to answer a certain bill and amended bill in equity, now filed and exhibited in said court against them by Eagle Glass and Manufacturing Company, a corporation organized under and by virtue of the laws of the state of West Virginia, and citizen of said state, having its principal office at Wellsburg, in said state and district. Hereof you are not to fail under the penalty of the law thence ensuing. And have then and there this writ.

219 Witness, the Honorable Alston G. Dayton, judge of the District Court of the United States for the Northern District of West Virginia, this 27th day of November, A. D. 1913, and in the 138th year of the independence of the United States of America.
[SEAL.] C. B. KEFAUVER, *Clerk.*

Memorandum.

The said defendants are required to file their answer or other defense in this suit in the clerk's office of said court on or before the twentieth day after service, excluding the day thereof; otherwise the bill may be taken pro confesso.

C. B. KEFAUVER, *Clerk.*

(Return Endorsed.)

Received this writ at Parkersburg, West Virginia, the 28th day of November, 1913. Executed the same the 29th day of November, 1913, at Follansbee, Brooke county, West Virginia, upon Peter J. Glasstetter, Julius W. Crinkey and William Hill, by delivering to each of them personally an attested copy thereof and at the same time exhibiting to each of them the original thereof. Thomas W. Rowe, William J. Croke, William P. Clarke, D. J. McGrail, George H. Ross, William Green, William E. Silcox, Harry Thompson and Harry E. Walker, not found in my district.

JAMES E. DOYLE,

United States Marshal N. D. W. Va.,

By HAL. M. RAPP,

*Office Deputy Marshall N. D. West Va.**Decree Filing Answer, etc.*

And at another day, to-wit: On the 16th day of December, 1913, the following order was made and entered of record, to-wit:

In Equity. No. 77.

EAGLE GLASS & MFG. CO.

v.

THOMAS W. ROWE et al.

This cause came on to be heard at Philippi on Tuesday, the 16th day of December, 1913, at 11:00 A. M., and plaintiff filed its motion for an injunction as prayed for in plaintiff's bill and amended bill. And thereupon John A. Howard appeared for the defendants, Peter J. Glasstetter, Julius W. Crinkey and William J. Hill, who on the 29th day of November, 1913, were duly served with a copy of the subpoena to answer the bill and amended bill in this cause, and were likewise duly served with copy of plaintiff's said motion for an injunction and of notice of the plaintiff's intention to make and file said motion on this 16th day of December, 1913, as aforesaid.

In support of its said motion for an injunction, plaintiff again filed the affidavits of Chas. B. Ott, H. W. Paull, James Paull, Chas. Cusick, George Goldbrandsen, Wm. H. Bayless, William Roth, L. E. Yeager, Harden Bucy, Geo. Lucas, John E. Myer, Elmer A. Baker, C. I. Miller, Homer A. Scott, John O. Fisher, Viola Duri, William J. Bell, Homer A. Scott (second affidavit), David W. Bair, Chas. B. Ott (fourth affidavit), and William J. Bell (second affidavit), and also filed the second affidavit of William Roth, as well as an authenticated copy, under the federal law, of the certificate of incorporation of the Eagle Company.

And the defendants, Peter J. Glasstetter, Julius W. Crinkey and William J. Hill, filed their joint and several answer and the joint affidavit.

And the further consideration of plaintiff's motion was continued to Parkersburg to be heard on Saturday, January 17, 1914, at 10:00 o'clock A. M., the plaintiff having the right on or before Saturday, January 10 1914, to file counter affidavits or take such other steps with relation to said answer or with relation to said affidavit as the plaintiff may be advised is proper in the premises.

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Complainant's Notice.

(Filed Dec. 16, 1913.)

In Equity. No. 77.

EAGLE GLASS AND MANUFACTURING COMPANY, a Corporation Organized under and by Virtue of the Laws of the State of West Virginia, a Citizen of said State, Having Its Principal Office at Wellsburg, in said State and District, Plaintiff,

vs.

THOMAS W. ROWE, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually and as President of the American Flint Glass Workers' Union; William J. Croke, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of the American Flint Glass Workers' Union; William P. Clarke, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually and as Secretary-Treasurer of the American Flint Glass Workers' Union; D. J. McGrail, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually, and as Assistant Secretary of the American Flint Glass Workers' Union; Peter J. Glastetter, of Steubenville, Ohio, and a Citizen of the State of Ohio; George H. Ross, of Steubenville, Ohio, and a Citizen of the State of Ohio; William Green, of Steubenville, Ohio, and a Citizen of the State of Ohio; Julius W. Crinkey, of Steubenville, Ohio, and a Citizen of the State of Ohio; William E. Sillcox, of Steubenville, Ohio, and a Citizen of the State of Ohio; William Hill, of Steubenville, Ohio, and a Citizen of the State of Ohio; Harry Thompson, of Steubenville, Ohio, and a Citizen of the State of Ohio, and Harry E. Walker, of Steubenville, Ohio, and a Citizen of the State of Ohio, Defendants.

Comes now the Eagle Glass and Manufacturing Company, the plaintiff named in the foregoing caption, by George R. E. Gilchrist, of its counsel, appearing in that behalf, and moves the court to grant an injunction as prayed for in plaintiff's bill and

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amended bill.

In support of this motion, and of its right now to be heard thereon plaintiff refers to and makes part hereof its bill, exhibits and accompanying affidavits filed in this court in this cause on the twenty-eighth day of July, 1913; the papers theretofore and on October 27, 1913, filed testimony taken and proceedings had as shown by a stenographic report thereof filed and made part of the record of this cause by an order entered therein on the third

day of November, 1913; and the amended bill and papers filed, orders made, and proceedings had in connection therewith.

In further support of its motion for an injunction plaintiff will upon the hearing of its said motion therefor submit additional affidavits.

GEORGE R. E. GILCHRIST,
Counsel for Plaintiff for the Purpose of this Motion.

Notice.

To each defendant named in the caption to the above cause:

Please take notice that on Tuesday, the sixteenth day of December, 1913, at eleven o'clock A. M., in the United States Court Room at Philippi, or as soon thereafter as counsel can be heard, the motion of which the foregoing is a copy will be submitted to the District Court of the United States for the Northern District of West Virginia for the decision of that court thereon.

GEORGE R. E. GILCHRIST,
Counsel for Plaintiff for the Purpose of This Motion.

(Return Endorsed Thereon.)

Received this writ at Parkersburg, West Virginia, the 28th day of November, 1913; executed same the 29th day of November, 1913, at Follansbee, Brooke county, West Virginia, upon Peter J. Glasstetter, Julius W. Crinkey and William Hill by delivering to each of them personally a true copy thereof and at the same time exhibiting to them writ marked original.

JAMES E. DOYLE,
United States Marshal N. D. W. Va.,
By HAL M. RAPP,
Office Deputy Marshal N. D. W. Va.

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Second Affidavit of William Roth.

(Filed Dec. 16, 1913.)

In Equity. No. 77.

EAGLE GLASS AND MANUFACTURING COMPANY, Plaintiff,
vs.
THOMAS W. ROWE and Others.

STATE OF WEST VIRGINIA,
County of Ohio, To wit:

William Roth, being by me first duly sworn upon his oath, says:
I am the same William Roth who made an affidavit sworn to before J. A. Gist in Brooke county on July 3d, 1913, and now reaffirm the statements made in that affidavit the same as if now made again in this affidavit, which by reference I make part hereof.

Joseph Gillooly mentioned in the former affidavit I made tried to get me to quit the Eagle and go to Cameron to work in a union factory. This was about Saturday, September 20th, 1913. He invited me to go over to Cameron with him and said that he would pay all of my expenses and if I did not like the job I could come back again and nothing would be said about it. I quit working at the Eagle on September 23rd, 1913, and on September 24th, 1913, went over to Cameron. Mr. Gillooly went out from Wheeling on the same train that I did to Cameron. I went to work in the union factory at Cameron the same day I got there, and after I was ready to go to work that evening Gillooly gave me a union card. Gillooly offered to pay my fare from Wellsburg to Wheeling, and from Wheeling to Cameron, but I declined that and paid my fare myself. When I got to Cameron Gillooly offered to lend me a couple of dollars, but I didn't take it. I told him I had some. Gillooly stayed in Cameron that night. I worked at the Cameron factory from the time I commenced on September 24th, 1913, for a little over two weeks, and then quit and came back to Wellsburg. I am not working now and have not been working since I left Cameron. I came back to Wellsburg from — on Saturday, September 27th, 1913, and within two hours after I got home on Saturday,

September 27th, 1913, Joseph Gillooly came to my house to see me. He asked me how I like the job at Cameron and I told him I didn't know. He wanted me to move my family out there and said he would give me the money, \$75.00 or \$125.00. I thought \$125.00 was required if I would take the money and move to Cameron. In the afternoon of the same day Gillooly gave me \$75.00 and said I could square up some of my bills and move my things to Cameron with it. I took the money and went back to Cameron, but I did not move my things there. Although I worked for over two weeks at Cameron, the work was not continuous, the factory being shut down part of the time. I got tired of that and quit the job at Cameron and came back to Wellsburg, and am not doing anything.

I make this affidavit for use before the court in support of any motion or of any pleading in which its subject matter is properly issuable.

WILLIAM ROTH.

Taken, sworn to and subscribed before me this 24th day of November, A. D. 1913.

[NOTARIAL SEAL.]

HERMAN A. HUNDT,

Notary Public in, for and of Ohio County, West Virginia.

My commission expires Dec. 3d, 1919.

(Two originals executed.)

Affidavit of W. J. Hill et al.

(Filed Dec. 16, 1913.)

In Equity.

EAGLE GLASS & MANUFACTURING COMPANY

vs.

THOMAS W. ROWE et als.

STATE OF WEST VIRGINIA,

County of Barbour, To wit:

William J. Hill, Julius W. Crinkey and Peter Glasstetter, being duly sworn by the undersigned notary public say upon their oaths, as follows:

First. They are defendants in the above styled suit, having been made parties defendant by the amended bill filed therein.

225 Second. They are residents and citizens of the state of Ohio, living at Steubenville, Ohio, and working as glass workers at Follansbee, West Virginia.

Third. They are not officers, agents, organizers or representatives of the American Flint Glass Workers' Union. They have no connection whatever with the said union, except that they are members of a local union which is affiliated with the said American Flint Glass Workers' Union. They are not officers of the local union, they have nothing whatever to do with the management or control of the local union, of which they are members, or of the control or management of the American Flint Glass Workers' Union. They have nothing whatever to do with the local union at Wellsburg, West Virginia, nor are they members of the local union at Wellsburg, West Virginia.

Fourth. They have not had anything to do with any attempt to organize a union at Wellsburg, West Virginia. They have not, in any manner, by any act of theirs aided or assisted any of the other defendants, or any other person or persons whatever in any effort to induce the plaintiff's employes to join the American Flint Glass Workers' Union, or to join any union whatever.

Fifth. They have no knowledge whatever of any of the things alleged in the bill of complaint and in the amended bill against the other defendants, and they have not aided, assisted, encouraged, authorized any of the other defendants in aiding or attempting to do any of the things alleged against them in said bill of complaint, or in the said amended bill of complaint.

Sixth. It is not true, as alleged in the amended bill that the defendants, Thomas W. Rowe, William Croke, William P. Clark and D. J. McGrail have been created by the affiants as their agents or representatives, and it is not true that they have assisted or that they are now supporting the said Rowe, Clark, Croke, McGrail and Gillooly in their effort to unionize plaintiff's employes to force

plaintiffs to recognize the American Flint Glass Workers' Union, and these affiants say that on the contrary, they have not created or constituted any of the said other defendants as their agents or representatives. It is not true that they have by any act, word, or deed of their own in any manner assisted or supported the said other defendants in their alleged efforts to unionize the plaintiff's employes.

Seventh. These affiants further say that it is not true as alleged in the amended bill of complaint that they, these affiants, are representatives of the American Flint Glass Workers' Union.

Eighth. And these affiants further say it is not true as alleged in the amended bill of complaint that they are the committee, agents, servants, confederates or associates of the other defendants named therein.

Ninth. These affiants further say that as they are advised and believe, the act of the plaintiff in making them parties of this suit is wholly unwarranted by the facts and that they, these affiants, are informed and believe that the plaintiff has, without warrant of any existing facts, made them parties to this suit for the purpose of establishing a fictitious case in which the said plaintiff may maintain this suit in the federal court.

Tenth. And these affiants further say that concerning the various matters alleged in the bill of complaint and brought into consideration here by reference made to the said bill of complaint and the amended bill, that they have no knowledge whatever of whether the allegations therein alleged against the other defendants are true or not, but these affiants say without hesitation or qualification, that they have not by any act, word, or deed of their- at any time authorized, aided, assisted, encouraged or taken any part in the doing of any of the things alleged to have been done or alleged to have been threatened, or attempted by any of the other defendants.

Eleventh. These affiants say that everything said hereinbefore in this affidavit by these three jointly is here repeated and said severally by each of them. And further affiants sayeth not.

WILLIAM J. HILL.
PETER J. GLASSTETTER.
JULIUS W. CRINKEY.

Taken, sworn to and subscribed before me this 16th day of December, 1913.

H. J. WILCOX,
Notary Public.

My commission expires September 10, 1916.

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Answer of W. J. Hill et al.

(Filed Dec. 16, 1913.)

In Equity.

EAGLE GLASS & MANUFACTURING COMPANY

vs.

THOMAS W. ROWE et als.

The Joint Answer of the Defendants, William J. Hill, Julius W. Crinkey and Peter J. Glasstetter.

To the Honorable Judge of said Court:

These respondents answering the bill of complaint, and the amended bill of complaint in the above styled suit, say:

First. It is true that they are citizens and residents of the state of Ohio.

Second. Concerning the allegations of the original bill of complaint and the allegations contained therein these respondents say that they have no knowledge of whether the things therein alleged to have been done by the other defendants are true or not, and that in so far as the said allegations may affect the rights of these respondents they call for strict proof thereof.

Third. These defendants deny that the defendants, Thomas W. Rowe, W. J. Croke, William P. Clarke, D. J. McGrail and Joseph Gillooly are agents or representatives of these respondents. And these respondents further deny as alleged in the amended bill of complaint that they have assisted or supported said Rowe, Croke, Clarke, McGrail and Gillooly in their alleged efforts to unionize the plaintiff's employes and to force the plaintiff to recognize the American Flint Glass Workers' Union.

Third. These respondents admit that they are members of a local union of glass workers at Steubenville, Ohio, which local union is affiliated with the American Flint Glass Workers' Union, and that, except their relation as members of their local union they have no connection or relation whatever with the other defendants, that they are not officers, agents, representatives, or organizers of their local union, or of the American Flint Glass Workers' Union, and that even in their capacity as members of their local union they have not by any act, word, or deed of theirs in any manner authorized, assisted, aided, or abetted or encouraged any of the other de-

228 fendants in doing any of the things alleged against them, (the other defendants) in the bill of complaint or the amended bill of complaint.

And these respondents having fully answered in so far as they have any knowledge of the matters alleged in the bill, pray that they may be hence dismissed with their costs in this behalf expended. And for this they will ever pray.

WILLIAM J. HILL.
PETER J. GLASSTETTER.
JULIUS W. CRINKEY.

JOHN A. HOWARD,
Solicitor for Respondents.

Subpœna in Chancery.

UNITED STATES OF AMERICA,
Northern District of West Virginia, ss:

to the President of the United States of America, to the Marshal of the Northern District of West Virginia, Greeting:

You are hereby commanded to summon Thomas W. Rowe, of Toledo, Ohio, and a citizen of the state of Ohio, individually, and president of the American Flint Glass Workers' Union; William Croke, of Toledo, Ohio, and a citizen of the state of Ohio, individually, and as vice-president of the American Flint Glass Workers' Union; William P. Clarke, of Toledo, Ohio, and a citizen of the state of Ohio, individually, and as secretary-treasurer of the American Flint Glass Workers' Union; D. J. McGrail, of Toledo, Ohio, and a citizen of the state of Ohio, individually, and as assistant secretary of the American Flint Glass Workers' Union; Peter J. Lasstetter, of Steubenville, Ohio, and a citizen of the state of Ohio; George H. Ross, of Steubenville, Ohio, and a citizen of the state of Ohio; William Green, of Steubenville, Ohio, and a citizen of the state of Ohio; Julius W. Crinkey, of Steubenville, Ohio, and a citizen of the state of Ohio; William E. Silcox, of Steubenville, Ohio, and a citizen of the state of Ohio; William Hill, of Steubenville, Ohio, and a citizen of the state of Ohio; Harry Thompson, of Steubenville, Ohio, and a citizen of the state of Ohio; and Harry E. Walker, of Steubenville, Ohio, and a citizen of the state of Ohio, if they be found in your district, to be and appear in the District Court of the United States, for the Northern District of West Virginia, aforesaid, in the clerk's office of said court, at Philippi, on the 9th day of January, 1914, to answer a certain bill and amended bill in equity, now filed and exhibited in said court against them by Eagle Glass and Manufacturing Company, a corporation organized under and by virtue of the laws of the state of West Virginia, and citizen of said state, having its principal office at Wellsburg, in said state of district. Hereof you are not to fail under the penalty of the law thence ensuing. And have then and there this writ.

Witness, the Honorable Alston G. Dayton, judge of the District Court of the United States for the Northern District of West Virginia, this 20th day of December, A. D. 1913, and in the 138th year of the independence of the United States of America.

Attest:

[SEAL.] C. B. KEFAUVER, *Clerk.*

Memorandum.

The said defendants are required to file their answer or other defense in this suit in the clerk's office of said court on or before the

twentieth day after service, excluding the day thereof; otherwise the bill may be taken pro confesso.

C. B. KEFAUVER, *Clerk.*

(Return Endorsed.)

Received this writ at Wheeling, Dec. 29, 1913; executed this writ the 29th day of Dec., 1913, by delivering a certified copy to Geo. H. Ross, Wm. Green, Wm. E. Silcox, Harry Thompson, Harry E. Walker, all in person in Follansbee, Brooke Co., W. Va.

J. E. DOYLE,
U. S. Marshal,

By C. E. WILLIAMS,
Deputy U. S. M.

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Order Correcting Appearance Docket.

And at another day, to-wit: On the 17th day of January 1914, the following order was made and entered of record, to-wit:

EAGLE GLASS AND MANUFACTURING CO.

vs.

THOMAS W. ROWE et al.

This 17th day of January, 1914, came the plaintiff by George R. E. Gilchrist and John C. Palmer, its solicitors, and came also John A. Howard, an attorney practicing in this court, and the motion heretofore made by said John A. Howard, to correct the appearance docket, by striking out the entries of appearance entered therein as to the appearance of Thomas W. Rowe, William P. Clarke, D. J. McGrail and William J. Croke, and it having been made to appear to the court that said entries of appearance were inadvertently made, and that said parties did not authorize an appearance to be entered for them, it is ordered that said entries be stricken from the appearance docket, to which ruling of the court the plaintiff excepts.

Answer of George H. Ross et al.

(Filed Jan'y 14, 1914.)

In Equity.

EAGLE GLASS & MANUFACTURING CO.

vs.

THOMAS W. ROWE et al.

The Joint and Several Answer of George H. Ross, William Green, William E. Silcox, Harry Thompson, and Harry E. Walker.

To the Honorable Judge of the said Court:

These respondents answering the bill of complaint, and the amended bill of complaint in the above styled suit, say:

First. It is true that they are citizens and residents of the state of Ohio.

Second. Concerning the allegations of the original bill of complaint and the allegations contained therein, these respondents say that they have no knowledge of whether the things therein alleged to have been done by the other defendants are true or not, and that in so far as the said allegations may affect the rights of these respondents they call for strict proof thereof.

Third. These defendants deny that the defendants, Thomas W. Rose, W. J. Croke, William P. Clarke, D. J. McGrail and Joseph Gillooly are agents or representatives of these respondents. And these respondents further deny as alleged in the amended bill of complaint that they have assisted or supported said Rowe, Croke, Clarke, McGrail and Gillooly in their alleged efforts to unionize the plaintiff's employees and to force the plaintiff to recognize the American Flint Glass Workers' Union.

Third. These respondents deny, as alleged in the sixth paragraph of the amended bill, that they, these respondents, are as members of the American Flint Glass Workers' Union, representatives of said union.

Fourth. These respondents admit that they are members of a local union of glass workers at Steubenville, Ohio, which local union is affiliated with the American Flint Glass Workers' Union, and that, except their relation as members of their local union, they have no connection or relation whatever with the other defendants, that they are not officers, agents, representatives or organizers of their local union, or of the American Flint Glass Workers' Union, and that even in their capacity as members of their local union they have not by any act, word, or deed of theirs in any manner, authorized, assisted, aided or abetted or encouraged any of the other defendants in doing any of the things alleged against them, (the other defendants) in the bill of complaint or the amended bill of complaint.

And these respondents having fully answered in so far as they have any knowledge of the matters alleged in the bill, pray that they may be hence dismissed with their costs in this behalf expended. And for this they will ever pray.

GEORGE H. ROSS,
WILLIAM GREEN,
WILLIAM E. SILCOX
HARRY THOMPSON,
HARRY E. WALKER,

By JOHN A. HOWARD,
Their Solicitor.

Solicitor for Respondents.

232 STATE OF OHIO.

County of Jefferson, To wit:

This day personally appeared before the undersigned notary public, George H. Ross, William Green, William E. Silcox, Harry Thompson and Harry E. Walker, who being first duly sworn say

upon their oaths that the facts alleged in the foregoing answer are true except in so far as they are therein stated to be upon information and belief, and that in so far as they are therein so stated they believe them to be true.

GEORGE H. ROSS,
WILLIAM GREEN,
WILLIAM E. SILCOX,
HARRY THOMPSON,
HARRY E. WALKER.

Taken, sworn to and subscribed before me this 7th day of January, 1914.

[NOTARIAL SEAL.]

T. R. BARCLAY,
Notary Public.

My commission expires June 24, 1915.

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Decree Awarding Temporary Injunction.

And at the same day, to-wit: On the 17th day of January, 1914, the following order was made and entered of record, to-wit:

In Equity. No. 77.

EAGLE GLASS AND MANUFACTURING COMPANY, a Corporation, Organized under and by Virtue of the Laws of the State of West Virginia, and Citizen of said State, Having its Principal Office at Wellsburg, in said State and District, Plaintiff,

vs.

THOMAS W. ROWE, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually and as President of the American Flint Glass Workers' Union; William J. Croke, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually and as Vice-President of the American Flint Glass Workers' Union; William P. Clarke, of Toledo, Ohio, and a citizen of the State of Ohio, Individually and as Secretary-Treasurer of the American Flint Glass Workers' Union; D. J. McGrail, of Toledo, Ohio, and a Citizen of the State of Ohio, Individually and as Assistant Secretary of the American Flint Glass Workers' Union; Peter J. Glasstetter, of Steubenville, Ohio, and a Citizen of the State of Ohio; George H. Ross, of Steubenville, Ohio, and a Citizen of the State of Ohio; William Green, of Steubenville, Ohio, and a Citizen of the State of Ohio; Julius W. Crinkey, of Steubenville, Ohio, and a Citizen of the State of Ohio; William E. Silcox, of Steubenville, Ohio, and a Citizen of the State of Ohio; William Hill, of Steubenville, Ohio, and a Citizen of the State of Ohio; Harry Thompson, of Steubenville, Ohio, and a Citizen of the State of Ohio; and Harry E. Walker, of Steubenville Ohio, and a Citizen of the State of Ohio, Defendants.

234 This cause came on to be further heard at Parkersburg on Saturday, January 17th, 1914, at 10 o'clock A. M., pursuant to the order entered herein at Philippi, December 14, 1913,

and thereupon John A. Howard appeared for the defendants, George H. Ross, William Green, William E. Sillico, Harry Thompson, and Harry E. Walker, who, on the twenty-ninth day of December, 1913, were duly served with a copy of the subpoena to answer the bill and amended bill in this cause, and filed their joint and several answer; and plaintiff's said motion for a temporary injunction was argued by counsel for plaintiff and by counsel for all the served defendants.

Upon consideration thereof, it was adjudged, ordered and decreed as follows, viz.: that the defendants to this cause, and each and every of them, their committees, agents, servants, confederates and associates be, and until the further order of this court —, inhibited, restrained and strictly enjoined from interfering and from combining, conspiring, or attempting to interfere with the employees of the plaintiff for the purpose of unionizing plaintiff's glass factory, without plaintiff's consent, by representing or causing to be represented in express or implied terms, to any of plaintiff's employees, or to any person who might become an employee of plaintiff, that such person will suffer or is likely to suffer some loss or trouble in continuing in or in entering the employment of plaintiff, assigning, representing or causing to be represented in express or implied terms to such employee or employees that such loss or trouble will or may come by reason of plaintiff not recognizing the American Flint Glass Workers' Union, or because plaintiff runs a non-union glass factory.

From interfering and from combining, conspiring or attempting to interfere with employees of plaintiff for the purpose of unionizing plaintiff's glass factory, without plaintiff's consent, and in aid of such purpose knowingly and wilfully bringing about in any manner the breaking by plaintiff's employees of contracts of service known to them at the time to exist, which plaintiff now has with its employees, and from knowingly and wilfully bringing about in any manner the breaking by plaintiff's employees of contracts of service which may hereafter be entered into by persons with plaintiff and be known to them while the relationship of employer and employee, as to such employee so brought to break his contract, exists, and especially from knowingly and wilfully enticing plaintiff's employees, present or future, knowing of such relationship, while the relationship of employer and employee, as to such employee so enticed, exists, to leave plaintiff's service, giving or assigning directly or indirectly as a reason for any such act so brought about, or enticement and leaving of plaintiff's service, that plaintiff does not recognize the American Flint Glass Workers' Union, or that plaintiff runs a nonunion glass factory, or that the interest of the American Flint Glass Workers' Union requires that plaintiff shall not be permitted to run a non-union glass factory, or that the interest of the union will be best promoted thereby.

From interfering and from combining, conspiring or attempting to interfere with the employees of plaintiff so as knowingly and wilfully to bring about in any manner the breaking by plaintiff's employees of contracts of service, known to them at the time to exist, which plaintiff now has with its employees, and from knowingly and wilfully bringing about in any manner the breaking by plaintiff's

employees of contracts of service which may hereafter be entered into by persons with plaintiff, and be known to them, while the relationship of employer and employee, as to such employee so brought to break his contract, exists, and especially from knowingly and wilfully enticing plaintiff's employees, present or future, knowing of such relationship, while the relationship of employer and employee, as to such employee so enticed, exists, to leave plaintiff's service, without plaintiff's consent, against plaintiff's will, and to plaintiff's injury.

From interfering with, hindering or obstructing any of the business of plaintiff, or its agents, servants or employees in the discharge of their duties as such, at and about plaintiff's glass factory, or elsewhere, by trespassing on or entering upon the grounds and premises of plaintiff, or within its glass factory, for the purpose of interfering therewith, or hindering or obstructing its business in any manner whatsoever, or with the purpose of compelling or inducing, by threats, force, intimidation, violence, violent or abusive language, or persuasion, any of the employees of plaintiff to refuse or fail to perform their duties as such employees.

From compelling or inducing or attempting to compel or induce by threats, intimidation, force, or violence, or abusive or violent language, any of the employees of plaintiff to leave its service or fail or refuse to perform their duties as such employees, or to compel or attempt to compel by threats, intimidation, force, violent or abusive language, any person desiring to seek employment in or about plaintiff's glass factory and works from
236 so accepting employment therein.

From entering upon or establishing a picket or pickets of men on or patrolling railroad or street cars passing through, near or adjacent to the plaintiff's property for the purpose of inducing or compelling by threats, intimidation, violence, violent or abusive language, or persuasion, any employee of plaintiff to fail or refuse to perform his duties as such, or for the purpose of interviewing or talking to any person or persons on said railroad or street cars coming to or near plaintiff's glass factory to accept employment with plaintiff, for the purpose and with the intention of inducing or compelling them, by threats, violence, intimidation, violent or abusive language, persuasion, or in any other manner whatsoever, to refuse or fail to accept service with plaintiff.

From compelling or inducing or attempting to compel or induce by threats, force, intimidation, or violent or abusive language, any employee of plaintiff to refuse or fail to perform his duties as such employee, and from compelling or attempting to compel or induce, by threats, intimidation, force, or violence, or abusive or violent language, any such employee to leave the service of plaintiff, and, by like methods, to prevent or attempt to prevent any person desiring to accept employment with plaintiff in or about its glass factory or works or elsewhere, from doing so by threats, violence, intimidation, or violent or abusive language.

From interfering in any manner whatsoever, either by threats, violence, intimidation, persuasion or entreaty with any person in the

employ of plaintiff who has contracted with and is in the actual service of plaintiff to entice or induce him to quit the service of plaintiff or to fail or refuse to perform his duties under his contract of employment, and from ordering, aiding, directing, assisting, or abetting in any manner whatsoever any person or persons to commit any or either of the acts aforesaid.

From congregating at or near the premises of plaintiff, and from picketing or patrolling said premises for the purpose of intimidating plaintiff's employees or coercing them by threats, intimidation, violence, abusive or violent language, or preventing them, in the manner aforesaid, from rendering their service to plaintiff, and, in like manner, from inducing or coercing them to leave the employment of plaintiff, and from in any manner so interfering with the plaintiff in carrying on its business in its usual and ordinary way, and from interfering by threats, intimidation, violence, violent or abusive language, with any person or persons who may be employed or seeking employment by plaintiff in the operation of plaintiff's glass factory and works.

From, either singly or in combination with others, collecting in and about the approaches to plaintiff's glass factory and works, for the purpose of picketing or patrolling or guarding the streets and approaches to the property of plaintiff for the purpose of intimidating, threatening or coercing any of plaintiff's employees from work in its said glass factory or works, or any person seeking employment therein, from entering into such employment, and from so interfering with said employees in going to and from their daily work in and about the glass factory and works of plaintiff.

And from, either singly or collectively, going to the homes or boarding houses of plaintiff's employees, or any of them, for the purpose of intimidating or coercing any or all of them to leave plaintiff's employment.

This injunction shall not take effect until said plaintiff or some responsible person for it shall enter into a bond in the penal sum of two thousand dollars, with surety therein satisfactory to the clerk of this court, conditioned that said plaintiff shall pay all such costs and damages as are sustained by the defendants, or any of them, by reason of this injunction should it be hereafter dissolved.

Service of a copy of this order on the defendants, their committees, agents, servants, confederates and associates, or any of them, shall be deemed and held sufficient notice of this order.

And thereupon the plaintiff tendered its bond above required in the penalty of two thousand dollars, with S. O. Paull as surety, which bond approved by the clerk and this court is ordered filed.

To which ruling of the court the defendants on whom process has been served except and give notice of their intention to appeal therefrom.

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Injunction Bond.

Fled Jan'y 17, 1914.)

Know all men by these presents, That Eagle Glass and Manufacturing Company, a corporation, as principal, and S. O. Paull, as surety, are held and firmly bound unto the United States of America, in the penal sum of two thousand dollars, to the payment whereof, well and truly to be made, we bind our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 17th day of January, 1914.

The condition of the above obligation is such, that, whereas the above named Eagle Glass and Manufacturing Company, a corporation, has obtained from the District Court of the United States for the Northern District of West Virginia, in the equity cause of said Eagle Glass and Manufacturing Company v. Thomas W. Rowe et al. pending in said court, at Philippi, a temporary injunction restraining and enjoining the defendants and others from doing the acts and things in said temporary injunction order set forth, which said order was duly entered of record on this day in said court.

Now, if the above bound Eagle Glass and Manufacturing Company shall pay all such costs and damages as are sustained by the defendants, or any of them, by reason of this injunction should it be hereafter dissolved, then this obligation to be void; otherwise to remain in full force and virtue.

[CORPORATE SEAL.]

EAGLE GLASS AND MFG. CO., [SEAL.]

By H. W. PAULL, *Prest.* [SEAL.]

S. O. PAULL, [SEAL.]

Approved Jan'y 17, 1914.

C. B. KEFAUVER, *Clerk.**Assignment of Errors.*

(Filed Jan'y 30, 1914.)

In Equity.

EAGLE GLASS & MANUFACTURING COMPANY

VS.

THOMAS W. ROWE et al.

Assignment of Errors.

Now comes the defendants, William J. Hill, Julius W. Crinkey, Peter J. Glasstetter, William Greene, William E. Silcox, Harry Thompson, George H. Ross and Harry E. Walker, and filed the following assignment of errors upon which they will rely upon their

appeal from the order and decree granting a temporary injunction, made by this honorable court on the 17th day of January, 1914, in the above styled cause:

1. It was error to refuse to dismiss the bill and amended bill as to these defendants on the filing of their answer and affidavits.

2. It was error to grant the temporary injunction as to these defendants on the case presented by the amended bill and the answer and affidavits.

3. The court had no jurisdiction to grant an injunction because there was no service of process on any of the parties named as defendants except on these defendants, and the record shows that they are not really defendants, but are named as defendants merely as a pretext resorted to by the plaintiff in order to get jurisdiction.

4. Because the temporary injunction is granted against these defendants on the sole ground that they are members of the union named in the bill.

In order that this assignment of errors may be and appear of record these defendants present the same to the court and pray that such disposition be made thereof as in accordance with the law and the statutes of the United States and the rules of the court in such cases made and provided, and the said defendants pray for a reversal of the order and decree made and entered by the said court in the above entitled cause on the 17th day of January, 1914.

JOHN A. HOWARD,

Of Counsel for the Defendants Named Herein.

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Memorandum for Appeal.

1. Petition for appeal filed January 30, 1914.

2. Appeal allowed January 30, 1914.

3. Appeal bond, dated January 31, 1914; penalty, \$200.00; obligors, Harry E. Walker and Citizens Trust & Guaranty Company of West Virginia; conditioned, for costs and damages.

4. Citation, dated February 2, 1914; acceptance of service thereof endorsed thereon February 3, 1914.

Stipulation as to Contents of Record.

(Filed Apr. 1, 1914.)

In Equity.

EAGLE GLASS & MANUFACTURING COMPANY

vs.

THOMAS W. ROWE et al.

It is hereby stipulated and agreed by and between counsel representing complainant and defendants in this cause that, in making the transcript of the record in this cause, the clerk shall omit therefrom and not copy therein the following documents, but shall, in

lieu thereof, transmit the originals thereof with said transcript of record to the clerk of the United States Circuit Court of Appeals for the Fourth Circuit:

1. Exhibit No. 3 with bill, being "Wage and Move List of the Paste Mould Department adopted by the Associated Manufacturers and the American Flint Glass Workers' Union in joint committee meeting, 1912, to continue in effect until June 30, 1913."

2. Exhibit No. 4 with bill, being "Wage and Move List and Rules and Regulations of the Iron Mould Blown Department, adopted July, 1912, by the joint meeting of committees of the Associated Manufacturers and the A. F. G. W. U., and revised by National Association of Pressed and Blown Glassware and the A. F. G. W. U., 1912 and 1913."

3. Exhibit No. 5 with bill, being Vol. 4, No. 8, dated June, 1913, of "The American Flint."

4. Exhibit No. 6 with bill, being "Constitution of the American Flint Glass Workers' Union as revised and adopted by the Thirty-fifth Session, 1912, held at Montreal, Canada," and Exhibit 241 No. 7 with bill, being "Constitution of the Local Unions of the American Flint Glass Workers' Union as revised and classified by the committee appointed at the Thirty-fifth Session, 1912, held at Montreal, Canada." Both of said exhibits being in one printed volume.

5. Exhibit No. 8 with bill, being Vol. 3, No. 6, dated April, 1912, of "The American Flint."

6. The sundry tax receipts filed as Exhibit A with the affidavit of Joseph Gillooly, filed August 6, 1913.

7. The telegram received from Mr. John A. Howard by the clerk of said court, dated July 31, 1913.

8. Copy of "The Wheeling Majority," dated July 31, 1913, filed October 27, 1913, as Exhibit A with affidavit of John O. Fisher.

9. Copy of "The Daily Herald," dated August 16, 1913, filed October 27, 1913.

Dated March 25, 1914.

Counsel for Complainant,
JOHN A. HOWARD,
Counsel for Appellants.

Stipulation under Rule 23,

(Filed Feb. 5, 1914.)

THE EAGLE GLASS & MANUFACTURING COMPANY
versus
THOMAS W. ROWE et al.

It is hereby stipulated and agreed that the clerk of this court shall make up a transcript of the record in the above styled cause, transmit the same to the clerk of the United States Circuit Court of Appeals

the Fourth Circuit, at Richmond, Va., and be printed, in accordance with Rule 23 of that court.
January 31, 1914.

JOHN A. HOWARD,
Counsel for William J. Hill and Others, Appellants.
JOHN C. PALMER, JR.,
GEORGE R. E. GILCHRIST,
Of Counsel for Appellee.

Order Extending Time for Filing Record.

And at another day, to-wit: On the 12th day of March, 1914, the following order was made and entered of record, to-wit:

In Equity.

EAGLE GLASS AND MANUFACTURING COMPANY

v.

THOMAS W. ROWE et al.

It appearing to the court that the citation heretofore issued in this case is returnable on the 13th day of March, 1914; and it further appearing to the court that by reason of the record therein being voluminous and the business of the office demanding attention the clerk of this court is unable to complete the transcript of record herein and file the same in the United States Circuit Court of Appeals on or before the return day of said citation, it is, this 12th day of March, 1914, ordered that the time within which said transcript of record in this cause shall be filed in the said United States Circuit Court of Appeals, at Richmond, Virginia, be, and the same is hereby, extended until the first day of May, 1914.

Decree Extending Time for Filing Record.

And at another day, to-wit: On the 1st day of May, 1914, the following order was made and entered of record, to-wit:

In Equity.

EAGLE GLASS AND MANUFACTURING COMPANY

v.

THOMAS W. ROWE et al.

It appearing to the court that the clerk of this court has been unable, because of other pressing official duties and demands upon him by this court, to complete the transcript of record in this cause or the United States Circuit Court of Appeals for the Fourth Circuit, and to file the same therein on or before this day, it is ordered that the time within which said transcript of record may be filed in said

Circuit Court of Appeals be, and the same is hereby, extended for the period of thirty days from this date.

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Clerk's Certificate.

UNITED STATES OF AMERICA,

Northern District of West Virginia, ss:

I, C. B. Kefauver, clerk of the District Court of the United States for the Northern District of West Virginia, hereby certify that the foregoing is a true and complete transcript of the record and proceedings of said court, except as therein noted, in the case of Eagle Glass & Manufacturing Co. v. Thomas W. Rowe, et al., pending therein, as the same appear on file and among the records of my said court.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, at Philippi, in said district, this 22d day of May, 1914.

[Seal of Court.]

C. B. KEFAUVER, *Clerk.*

245 On the same day, to-wit: May 25, 1914, the original petition for an appeal, order allowing appeal, appeal bond and citation, are certified up under Sec. 7 of Rule 14.

Same day, original exhibits are certified up.

Same day, appearance of John A. Howard is entered for the appellants.

June 12, 1914, appearance of John C. Palmer, Jr., and George R. E. Gilchrist is entered for the appellee.

August 28, 1914, twenty-five copies of the printed record are filed.

Motion of Appellee to Dismiss Appeal.

Filed December 3, 1914.

United States Circuit Court of Appeals, Fourth Circuit.

No. 1289.

WILLIAM J. HILL, JULIUS W. CRINKEY, PETER GLASSTETTER,
George H. Ross, William Greene, William E. Silcox, Harry
Thompson, and Harry E. Walker, Appellants,

vs.

EAGLE GLASS & MANUFACTURING COMPANY, Appellee.

Motion to Dismiss Appeal.

The appellee in the above entitled cause, Eagle Glass & Manufacturing Company, now comes by George R. E. Gilchrist and John C. Palmer, Jr., its counsel, and moves the Court to dismiss the
246 appeal hereinbefore granted in the above entitled cause on the ground that said appeal was improvidently awarded.

The ground for said motion is that the decree in said cause which has been appealed from by the above named appellants, is a decree against the said appellants and divers other persons jointly, and said record does not show that said other defendants have joined in said appeal or have been notified of the intention of the said appellants to take said appeal. Neither does said record show any severance of said appellants from the other defendant named in said joint decree so as to permit said appellants to appeal to this court separately from said joint defendants in the original cause. As authority for this motion the following cases are cited:

Hardie vs. Wilson, 146 U. S., 179; Beardsley vs. Ark. etc., Ry. Co., 158 U. S., 123; Estis vs. Trabue, 128 U. S., 225; Grand Island, etc., R. R. Co. vs. Sweeney, 95 F., 396; Hook vs. Mercantile Trust Co., 95 F., 41; Dodson vs. Fletcher, 78 F., 214; Motion to Reinstate Cause After Dismissal Denied, 79 F., 129.

Respectfully submitted,

GEORGE R. E. GILCHRIST.,

JOHN C. PALMER, Jr.,

Counsel for Appellee.

December 3, 1914, (November Term, 1914.) cause came on to be heard on motion to dismiss and on the merits before Knapp and Woods, Circuit Judges and Waddill, District Judge, and is argued by counsel and submitted.

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Opinion.

Filed January 13, 1915.

United States Circuit Court of Appeals, Fourth Circuit.

No. 1289.

WILLIAM J. HILL, JULIUS W. CRINKEY, PETER GLASSTETTER,
George H. Ross, William Greene, William E. Silcox, Harry
Thompson, and Harry E. Walker, Appellants,

vs.

EAGLE GLASS & MANUFACTURING COMPANY, Appellee.

Appeal from the District Court of the United States for the Northern
District of West Virginia, at Philippi.

[Argued Dec. 3, 1914; Decided Jan. 13, 1915.]

Before Knapp and Woods, Circuit Judges, and Waddill, District
Judge.

John A. Howard, for Appellants, and John C. Palmer, Jr., and
Geo. R. E. Gilchrist, for Appellee.

WOODS, *Circuit Judge*:

In this suit for injunction by the Eagle Glass and Manufacturing
Company against Thomas B. Rowe, individually and as Presi-
248 dent, and a number of other officers of the American Flint
Glass Workers' Union, individually and in their official ca-

capacity, all alleged to be residents of the State of Ohio, none of the defendants were served except Joseph Gillooly, a member of the Executive Board and one of the organizers of the Union who was found in the State of West Virginia. A temporary order was granted restraining the defendants from doing certain alleged illegal acts in furtherance of their alleged illegal scheme to unionize the plaintiff's plant. The fact that Gillooly was not a resident of the State of Ohio but of the State of West Virginia, having been made to appear through his counsel, Mr. John A. Howard, the court dismissed the bill as to him and retained it as to the other defendants on the ground that Mr. Howard had formally appeared for all the defendants. Mr. Howard having made a perfectly clear uncontroverted showing to the court that he had no authority to represent the other defendants, and that he had appeared generally by inadvertence, when he intended to appear for Gillooly alone, the Court upon the most obvious principles of right and common sense ordered the appearance as to the defendants other than Gillooly struck out. In the meantime, however, on 27 November, 1913, an order was made allowing the plaintiff to amend the bill by making Peter J. Glasstetter and others, members at Steubenville, Ohio, of the American Flint Glass Workers' Union, defendants. The amended bill alleged that these members of the Union were assisting the officers of the Union named in the original bill "in the efforts to unionize plaintiff's employes and to force plaintiff to recognize said American Flint Glass Workers' Union." The new parties defendant submitted affidavits that they were only members, not officers, of a local union, that Rowe and others who were the general officers of the union were not authorized to represent them in their alleged illegal acts, and that they knew nothing of their efforts to unionize plaintiff's factory. There was no showing whatever to the contrary. Under these conditions the Court issued a temporary injunction against all of the defendants named in the bill and the amended bill, except Gillooly, as to whom the bill had been dismissed.

We think this was error. Rowe and others, general officers of the Union, were not served, and, therefore, no relief could be
249 given against them, unless it could be said they were brought before the court by representation when Glasstetter and others, mere members of the local union, were ordered to be made parties and appeared. This effect is asserted under Equity Rule 28: "When the question is one of common or general interest to many persons constituting a class so numerous as to make it impracticable to bring them all before the Court, one or more may sue or defend for the whole."

The Union is a voluntary association and its members are not responsible for a tort of other members unless they have authorized or participated in it or have aided in some way in its perpetration after knowledge of the illegal purpose or facts from which such knowledge may be inferred. *Pettibones* 1; U. S., 148 U. S., 197; *Lawlor vs. Loewe*, 209 Fed., 721.

When the allegation of a general or common interest to many persons is denied, the duty devolves on the Court to determine

whether the common or general interest exists before decreeing against those who are alleged to be in court by representation. The plaintiff had no pretense of a case against Glasstetter and the other defendants brought in by amendment for participating or aiding the defendants not served, in the alleged torts committed by them, and, therefore, there was no such common or general interest as authorized the court's decree against the defendants served, by virtue of the service and appearance of the defendants brought in by amendment.

All the questions involved in the merits of the appeal were decided adversely to the appellee by this Court in *Mitchell vs. Hitchman Coal & Coke Co.*, 214 Fed., 685.

Reversed.

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Decree.

Filed and Entered January 13, 1915.

United States Circuit Court of Appeals, Fourth Circuit.

No. 1289.

WILLIAM J. HILL, JULIUS W. CRINKEY, PETER GLASSTETTER,
George H. Ross, William Greene, William E. Silcox, Harry
Thompson, and Harry E. Walker, Appellants,

vs.

EAGLE GLASS & MANUFACTURING COMPANY, Appellee.

Appeal from the District Court of the United States for the Northern
District of West Virginia.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of West Virginia, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court, in this cause, be, and the same is hereby reversed, with costs; and that this cause be, and the same is hereby, remanded to the District Court of the United States for the Northern District of West Virginia, at Philippi, with directions to dissolve the injunction and dismiss the bill in accordance with the opinion of this Court.

January 13, 1915.

MARTIN A. KNAPP,

U. S. Circuit Judge.

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Order Staying Mandate.

Filed January 15, 1915.

United States Circuit Court of Appeals, Fourth Circuit.

No. 1289.

WILLIAM J. HILL, JULIUS W. CRINKEY, PETER GLASSTETTER,
George H. Ross, William Greene, William E. Silcox, Harry
Thompson, and Harry E. Walker, Appellants,

vs.

EAGLE GLASS & MANUFACTURING COMPANY, Appellee.

Appeal from the District Court of the United States for the Northern
District of West Virginia, at Philippi.

Upon the application of counsel for appellee and for good cause
shown,

It is ordered that the mandate of this Court in the above entitled
cause, be, and the same is hereby stayed pending application of the
appellee to the Supreme Court for a writ of certiorari, provided said
application is made on or before March 13th, 1915.

January 15, 1915.

MARTIN A. KNAPP.

252 *Petition for an Appeal to the Supreme Court of the United
States.*

Filed February 22, 1915.

United States Circuit Court of Appeals, Fourth Circuit.

No. 1289.

WILLIAM J. HILL, JULIUS W. CRINKEY, PETER GLASSTETTER,
George H. Ross, William Greene, William E. Silcox, Harry
Thompson, and Harry E. Walker, Appellants,

v.

EAGLE GLASS & MANUFACTURING COMPANY, Appellee.

In Equity.

To the Honorable C. A. Woods, U. S. Circuit Judge:

Your petitioner, the above named Eagle Glass and Manufacturing
Company, a corporation, feeling aggrieved by the decree rendered
and entered in the above entitled cause on the thirteenth day
January, 1915, does hereby appeal from said decree (which is n
final) for the reasons set forth in the assignment of errors filed her

with, and your petitioner prays that its appeal be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be sent to the Supreme Court of the United States, sitting at Washington, D. C., under the rules of such Court in such cases made and provided. And your petitioner further prays that this Court may make the proper order relating to the security to be required of petitioner on its bond upon appeal, the same to act as a supersedeas bond and also as a bond for costs and damages on appeal.

Your petitioner also prays that this Court will make all other necessary orders in this matter as the law and rules direct, and your petitioner as in duty bound will ever pray, etc.

GEORGE R. E. GILCHRIST,

Of Counsel for Eagle Glass and Manufacturing Company.

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Assignment of Errors.

Filed Feb. 22, 1915.

Now comes the Eagle Glass and Manufacturing Company in the above entitled cause and files the following assignment of errors upon which it will rely upon the prosecution of its appeal in the above entitled cause from the decree made by this Honorable Court on the thirteenth day of January, 1915.

I.

That the said Circuit Court of Appeals erred in rendering its said decree of the thirteenth day of January, 1915, which concludes with this following statement:

"It is now here ordered, adjudged, and decreed by this Court, that the decree of the said district Court, in this cause, be, and the same is hereby reversed, with costs; and that this cause be, and the same is hereby, remanded to the District Court of the United States for the Northern District of West Virginia, at Philippi, with directions to dissolve the injunction and dismiss the bill in accordance with the opinion of this Court."

II.

That said Circuit Court of Appeals erred in reversing the decree rendered by the District Court of the United States for the Northern District of West Virginia on January 17, 1914, awarding a temporary injunction as therein and thereby granted.

III.

That said Circuit Court of Appeals erred in reaching the following conclusion:

"The plaintiff had no pretense of a case against Glasstetter and the

other defendants brought in by amendment for participating or aiding the defendants not served, in the alleged torts committed by them, and, therefore, there was no such common or general interest as authorized the court's decree against the defendants
254 served, by virtue of the service and appearance of the defendants brought in by amendment."

IV.

That said Circuit Court of Appeals erred in reaching the following conclusion:

"Rowe and others, general officers of the Union, were not served, and, therefore, no relief could be given against them."

V.

That said Circuit Court of Appeals erred in reaching the conclusion that Rowe and others, general officers of the Union, are not in Court by virtue of Equity Rule 28, and the service had upon Glass-tetter and the other defendants brought in by amendment charged in the amended bill with having "assisted" and with "now supporting" the defendants, not served, "in their efforts to unionize plaintiff's employees and to force plaintiff to recognize said American Flint Glass Workers' Union" against plaintiff's will and without plaintiff's consent by the doing of the many specific and unlawful acts in the bill and amended bill and supporting affidavits fully set forth.

VI.

That said Circuit Court of Appeals erred in reaching the conclusion that Rowe and others, general officers of the Union, are not in Court by virtue of Equity Rule 28, and the service had upon Glass-tetter and the other defendants brought in by amendment charged in the amended bill with being members and "representatives" of the American Flint Glass Workers' Union, which in the bill is alleged to be an unlawful body at common law and under the law of West Virginia, and to be engaged in an unlawful conspiracy with certain employers of union labor who contract with said Rowe and others, general officers of said Union, and employ only members of that Union, such employers being alleged to be competitors of plaintiff and the conspiracy being alleged to be to break
255 down plaintiff's glass works as a non-union factory, put an end to "the many complaints that have been made by manufacturers concerning the low selling price of goods quoted by the Glass Co.," and have the Eagle Company then "co-operate with the efforts of other manufacturers towards maintaining an equitable selling price."

VII.

That said Circuit Court of Appeals having reached the conclusion arrived at, and set forth, and asserted and intended to be urged a

the third, fourth, fifth and sixth errors in this "Assignment of Errors," further erred in then reversing said decree awarding said temporary injunction and in remanding said cause to the District Court of the United States for the Northern District of West Virginia, at Philippi, with directions to dismiss the bill.

VIII.

That said Circuit Court of Appeals erred in reaching the following conclusion:

"All the questions involved in the merits of the appeal were decided adversely to the appellee by this Court in *Mitchell v. Hitchman Coal & Coke Co.*, 214 Fed., 685."

IX.

That said Circuit Court of Appeals having reached the conclusion arrived at, and set forth, and asserted and intended to be urged as the eighth error in this "Assignment of Errors," further erred in then reversing said decree awarding said temporary injunction and remanding said cause to the District Court of the United States for the Northern District of West Virginia, at Philippi, with directions to dismiss the bill.

X.

That said Circuit Court of Appeals erred in not finding that the American Flint Glass Workers' Union is an unlawful body at common law.

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XI.

That said Circuit Court of Appeals erred in not finding that the American Flint Glass Workers' Union is an unlawful body at common law and under the law of West Virginia.

XII.

That said Circuit Court of Appeals erred in not holding that the said defendants to the bill and to the amended bill, and each and every of them, their committees, agents, servants, confederates and associates, should be restrained from persuading plaintiff's employees to leave plaintiff's service.

XIII.

That said Circuit Court of Appeals erred in not holding that the said defendants to the bill and to the amended bill, and each and every of them, their committees, agents, servants, confederates and associates, should be restrained from paying money to employees of the plaintiff, not members of the American Flint Glass Workers' Union, for the purpose of inducing them to leave plaintiff's employment.

XIV.

That said Circuit Court of Appeals erred in not distinguishing this case from a strike case, and in applying to this case propositions of law held applicable to strike cases, but which are not applicable to and should not have been applied to this case.

XV.

That said Circuit Court of Appeals erred in reaching the conclusion that even if at common law, as originally adopted by the State of West Virginia, the American Flint Glass Workers' Union is unlawful, it does not follow that that part of the common law is now applicable in that State owing to the "changed conditions" to which the Court referred in deciding the case of *Michell v. Hitchman Coal & Coke Company*, 214 Fed., 685; such alleged "changed conditions" to which the Court referred in deciding said case, and such inapplicability of the common law, not being recognized by the Constitution nor by the Statute Law of the State of West Virginia, nor by any decision of the Supreme Court of Appeals of that State.

XVI.

That said Circuit Court of Appeals erred in not holding plaintiff to be entitled to any of the relief prayed for by its bill, and by entering that portion of its said decree of the thirteenth day of January, 1915, wherein said Court ordered "that this cause be, and the same is hereby, remanded to the District Court of the United States for the Northern District of West Virginia, at Philippi, with directions to dissolve the injunction and dismiss the bill."

XVII.

That said Circuit Court of Appeals erred in reversing those parts of said decree awarding a temporary injunction by said District Court, in which the defendants to the bill and to the amended bill were until the further order of that Court "inhibited, restrained, and strictly enjoined from interfering and from combining, conspiring, or attempting to interfere with the employees of the plaintiff for the purpose of unionizing plaintiff's glass factory without plaintiff's consent," by all of the various means set forth particularly and in detail in said decree of said District Court.

XVIII.

That said Circuit Court of Appeals erred in refusing to allow said injunction, decreed in said District Court, to continue in force until the further order of that Court, by reversing said decree, and ordering the dismissal of said bill, because it thereby deprived the said Eagle Glass and Manufacturing Company of its contractual and property rights, as described in its bill of complaint, and as guar-

and to it by the Fifth Amendment and by the Fourteenth Amendment to the Constitution of the United States.

Therefore, the said Eagle Glass and Manufacturing Company prays that said decree of said Circuit Court of Appeals be reversed, and that it enter such decree as may be directed by the Supreme Court of the United States.

GEORGE R. E. GILCHRIST,

Of Counsel for Eagle Glass and Manufacturing Company.

Order Allowing Appeal.

Filed February 22, 1915.

United States Circuit Court of Appeals, Fourth Circuit.

No. 1289.

JAM J. HILL, JULIUS W. CRINKEY, PETER GLASSTETTER, George H. Ross, William Greene, William E. Silcox, Harry Simpson, and Harry E. Walker, Appellants,

vs.

EAGLE GLASS & MANUFACTURING COMPANY, Appellee.

Appeal from the District Court of the United States for the Northern District of West Virginia, at Philippi.

On motion of George R. E. Gilchrist, solicitor and counsel for appellee, it is hereby ordered that an appeal to the Supreme Court of the United States from the final decree heretofore filed and entered in this Court, on the thirteenth day of January, 1915, be, and the same is hereby allowed, as prayed, and that a certified transcript of the oral testimony, exhibits, stipulations and all proceedings be forthwith transmitted to said Supreme Court of the United States.

And it appearing in the opinion of the undersigned Judge of the Circuit Court of Appeals that certain original papers filed in the District Court and by an order entered in that court on the 1st day of January, 1914, settling the contents of the transcript of the record on appeal from that Court to this Court, transmitted to this Court for its consideration in connection with said appeal, and as part of the record of said case on appeal, are papers which should be inspected by the Supreme Court of the United States on consideration of this case, it is hereby ordered that the clerk of this Court do transport the same to said Supreme Court in connection with the transcript, such original papers to be returned to this Court on the conclusion of the cause in the Supreme Court.

It is further ordered that the bond on appeal be fixed at the sum of \$1000.00, the same to operate as a supersedeas and also as a bond for costs and damages on appeal.

Done at Philippi, West Virginia, this 22nd day of February, 1915.

C. A. WOODS,
U. S. Circuit Judge.

Appeal and Supersedeas Bond.

Filed and Approved Feb. 22, 1915.

Know all men by these presents, That we, Eagle Glass and Manufacturing Company, a corporation, as principal, and George R. E. Gilchrist, as surety, are held and firmly bound unto Thomas W. Rowe, of Toledo, Ohio, and a citizen of the State of Ohio, individually, and as president of the American Flint Glass Workers' Union; William J. Croke, of Toledo, Ohio, and a citizen of the State of Ohio, individually, and as vice-president of the American Flint Glass Workers' Union; William P. Clarke, of Toledo, Ohio, and a citizen of the State of Ohio, individually, and as secretary-treasurer of the American Flint Glass Workers' Union; D. J. McGrail, of Toledo, Ohio, and a citizen of the State of Ohio, individually, and as assistant secretary of the American Flint Glass Workers' Union; Peter J. Glasstetter, of Steubenville, Ohio, and a citizen of the State of Ohio; George H. Ross, of Steubenville, Ohio, and a citizen of the State of Ohio; William Green, of Steubenville, Ohio, and a citizen of the State of Ohio; Julius W. Crinkey, of Steubenville, Ohio, and a citizen of the State of Ohio; William E. Sillico, of Steubenville, Ohio, and a citizen of the State of Ohio; William Hill, of Steubenville, Ohio, and a citizen of the State of Ohio; Harry Thompson, of Steubenville, Ohio, and a citizen of the State of Ohio; and Harry E. Walker, of Steubenville, Ohio, and a citizen of the State of Ohio, in the full and just sum of \$1,000.00, to be paid to the said parties above named, their certain attorney, executor, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals and dated this 22nd day of February, in the year of our Lord one thousand nine hundred and fifteen.

Whereas, lately at a court held by the United States Circuit Court of Appeals for the Fourth Circuit, in a suit depending in said court, between William J. Hill, Julius W. Crinkey, Peter Glasstetter, George H. Ross, William Greene, William E. Sillico, Harry Thompson and Harry E. Walker, Appellants, vs. Eagle Glass and Manufacturing Company, Appellee, a decree was rendered and entered against the said Appellee on January 13, 1915, and the said Eagle Glass and Manufacturing Company having obtained an appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said William J. Hill, and the others as named above, citing and admonished them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof.

Now, the condition of the above obligation is such, That if the said Eagle Glass and Manufacturing Company shall prosecute said appeal to effect, and answer all damages and costs if it fail to make

ts plea good, then the above obligation to be void; else to remain in full force and virtue.

EAGLE GLASS AND MANUFACTURING
COMPANY,

By S. O. PAULL, *Its Secretary*,
GEORGE R. E. GILCHRIST.

[SEAL.]

[SEAL.]

[SEAL.]

[Seal of Eagle Glass & Mfg. Co.]

Sealed and delivered in presence of—

C. M. DEAN,

Dep. Clk. U. S. Cir. Ct. of Appeals, 4th Ct.

Approved by—

C. A. WOODS,

U. S. Circuit Judge.

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Citation.

Issued Feb. 22, 1915.

United States Circuit Court of Appeals, Fourth Circuit.

No. 1289.

WILLIAM J. HILL, JULIUS W. CRINKEY, PETER GLASSTETTER,
George H. Ross, William Greene, William E. Sillico, Harry
Thompson, and Harry E. Walker, Appellants,

vs.

EAGLE GLASS & MANUFACTURING COMPANY, Appellee.

Appeal from the District Court of the United States for the Northern
District of West Virginia, at Philippi.

UNITED STATES OF AMERICA, ss:

The President of the United States:

To Thomas W. Rowe, of Toledo, Ohio, and a citizen of the State of
Ohio, individually; Thomas W. Rowe, of Toledo, Ohio, and a
citizen of the State of Ohio, as president of the American Flint
Glass Workers' Union; William J. Croke, of Toledo, Ohio, and a
citizen of the State of Ohio, individually; William J. Croke, of
Toledo, Ohio, and a citizen of the State of Ohio as vice-president
of the American Flint Glass Workers' Union; William P. Clark,
of Toledo, Ohio, and a citizen of the State of Ohio, individually;
William P. Clark, of Toledo, Ohio, and a citizen of the State of
Ohio, as secretary-treasurer of the American Flint Workers' Union;

D. J. McGrail, of Toledo, Ohio, and a citizen of the State
of Ohio, individually; D. J. McGrail, of Toledo, Ohio, and a
citizen of the State of Ohio as assistant secretary of the

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American Flint Glass Workers' Union; Peter J. Glasstetter, of Steubenville, Ohio, and a citizen of the State of Ohio; George H. Ross, of Steubenville, Ohio, and a citizen of the State of Ohio; William Green, of Steubenville, Ohio, and a citizen of the State of Ohio; Julius W. Crinkey, of Steubenville, Ohio, and a citizen of the State of Ohio; William E. Silcox, of Steubenville, Ohio, and a citizen of the State of Ohio; William Hill, of Steubenville, Ohio, and a citizen of the State of Ohio; Harry Thompson, of Steubenville, Ohio, and a citizen of the State of Ohio; Harry E. Walker, of Steubenville, Ohio, and a citizen of the State of Ohio, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, within thirty days from the date hereof, pursuant to an order allowing an appeal, filed and entered in the clerk's office of the United States Circuit Court of Appeals for the Fourth Circuit, from a final decree rendered and entered on January 13, 1915, in that certain suit, being in equity No. 1289, wherein William J. Hill, Julius W. Crinkey, Peter Glasstetter, George H. Ross, William Greene, William E. Silcox, Harry Thompson and Harry E. Walker, are appellants, and the Eagle Glass and Manufacturing Company is appellee, to show cause, if any there be, why the decree rendered and entered against the said appellee, as in said order allowing appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Charles A. Woods, United States Circuit Judge for the Fourth Circuit, this 22nd day of February, 1915.

C. A. WOODS,

U. S. Circuit Judge.

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Service of Citation.

Received this writ at Steubenville, Ohio, on March 4, 1915, and on March 5th, 1915, I served the within named Peter J. Glasstetter by delivering a certified copy of this writ, with the endorsements thereon, at his usual place of residence, at Steubenville, Ohio, placing same in the hands of an adult member of the household.

Service on all other within named defendants residing at Steubenville, Ohio, shown by return on additional writs in this cause.

All within named defendants residing at Toledo, Ohio, not served, the said City of Toledo not being located in this district.

EUGENE L. LEWIS,

U. S. Marshal, S. D. O.

By J. S. McCALLISTER,

Deputy.

Fees:	
1 service	\$2.00
Expense in of mileage.....	9.20
Total	\$11.20

Received this writ at Cincinnati, Ohio, on March 4, 1915, and on March 5, 1915, I served the within named George H. Ross, by delivering to him a certified copy of this writ, with the endorsements thereon, by handing same to him personally at Steubenville, Ohio.

Service on all other within named defendants residing at Steubenville, Ohio, shown by return on additional writs in this cause.

All within named defendants residing at Toledo, Ohio, not served, the said City of Toledo not being located in this district.

EUGENE L. LEWIS,
U. S. Marshal, S. D. O.,
 By J. S. McCALLISTER,
Deputy.

Fees: 1 service, \$2.00.

Received this writ at Cincinnati, Ohio, on March 4, 1915, and on March 5, 1915, I served the within named William Green 264 by delivering a certified copy of this writ, with the endorsements thereon, at his usual place of residence, at Steubenville, Ohio, placing same in the hands of an adult member of the household.

Service on all other within named defendants residing at Steubenville, Ohio, shown by return on additional writs in this cause.

All within named defendants residing at Toledo, Ohio, not served, the said City of Toledo not being located in this district.

EUGENE L. LEWIS,
U. S. Marshal, S. D. O.,
 By J. S. McCALLISTER,
Deputy.

Fees: 1 service, \$2.00.

Received this writ at Cincinnati, Ohio, on March 4, 1915, and on March 5, 1915, I served the within named Julius W. Crinkey by delivering a certified copy of this writ, with the endorsements thereon, at his usual place of residence, placing same in the hands of an adult member of the household, at Steubenville, Ohio.

Service on all other within named defendants residing at Steubenville, Ohio, shown by return on additional writs in this cause.

All other within named defendants residing at Toledo, Ohio, not served, the said City of Toledo not being located in this district.

EUGENE L. LEWIS,
U. S. Marshal, S. D. O.,
 By J. S. McCALLISTER,
Deputy.

Fees: 1 service, \$2.00.

Received this writ at Cincinnati, Ohio, on March 4, 1915, and on March 5, 1915, I served the within named William E. Sillcox by 265 delivering a certified copy of this writ, with the endorsements thereon, at his usual place of residence, at Steubenville, Ohio, by placing same in the hands of an adult member of the household.

Service on other within named defendants residing at Steubenville, Ohio, shown by return on additional writs in this cause.

All within named defendants residing at Toledo, Ohio, not served, the said City of Toledo not being located in this district.

EUGENE L. LEWIS,

U. S. Marshal, S. D. O.,

By J. S. McCALLISTER,

Deputy.

Fees: 1 service, \$2.00.

Received this writ at Steubenville, Ohio, on March 4, 1915, and on March 5, 1915, I served the within named William Hill, by delivering to him a certified copy of this writ, with the endorsements thereon, by handing same to him personally at Steubenville, Ohio.

Service on all other within named defendants residing at Steubenville, shown by return on additional writs in this case.

All within named defendants residing at Toledo, Ohio, not served, the said City of Toledo not being located in this district.

EUGENE L. LEWIS,

U. S. Marshal, S. D. O.,

By J. S. McCALLISTER,

Deputy.

Fees: 1 service, \$2.00.

Received this writ at Cincinnati, Ohio, on March 4, 1915, and on March 5, 1915, I served the within named Harry Thompson, by delivering a certified copy of this writ, with the endorsements thereon, at his usual place of residence, at Steubenville, Ohio, placing same in the hands of an adult member of the household.

266 Service on all other within named defendants residing at Steubenville, Ohio, shown by return on additional writs in this cause.

All within named defendants residing at Toledo, Ohio, not served, the said City of Toledo not being located in this district.

EUGENE L. LEWIS,

U. S. Marshal, S. D. O.,

By J. S. McCALLISTER,

Deputy.

Fees: 1 service, \$2.00.

Received this writ at Cincinnati, Ohio, on March 4, 1915, and on March 5, 1915, I served the within named Harry Walker, by delivered a certified copy of this writ, with the endorsements thereon, at his usual place of residence, at Steubenville, Ohio, by placing same in the hands of an adult member of the household.

Service on all other within named defendants residing at Steubenville, Ohio, shown by return on additional writs in this cause.

All within named defendants residing at Toledo, Ohio, not served, the said City of Toledo not being located in this district.

EUGENE L. LEWIS,
U. S. Marshal, S. D. O.,
 By J. S. McCALLISTER,
Deputy.

Fees: 1 service, \$2.00.

U. S. Marshal's Return.

THE UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

Received this Writ at Toledo, Ohio, March 4th, 1915, and on the same day at the same place I served it on the within named W. P. Clark, as an Individual by delivering to him personally a true and certified copy hereof, with all endorsements thereon, 267 and on the same day at the same place I served it on the within named W. P. Clark, as Secretary-Treasurer, of the American Flint Glass Workers Union, by delivering to him personally a true and certified copy hereof with all endorsements thereon, and on March 5th, 1915, at the same place I served it on the within named T. W. Rowe, as an Individual by delivering to him personally a true and certified copy hereof, with all endorsements thereon and on the same day at the same place I served it on the within named T. W. Rowe, as President of the American Flint Glass Workers Union, by delivering to him personally a true and certified copy hereof with all endorsements thereon.

The within named McGrail could not be found in my District.

CHAS. W. LAPP,
U. S. Marshal.
 H. J. BARTLEY,
Deputy.

Marshal's fees: Service . . .	\$8.20
Travel24
	<hr/>
	\$8.24

Service of the within citation accepted and acknowledged this 22d day of March, 1915.

JOHN A. HOWARD,
Council of Record for William J. Hill, Julius W. Crinkey, Peter Glasstetter, George H. Ross, William Green, William S. Silcox, Harry Thompson, and Harry E. Walker.

206 EAGLE GLASS & MFG. CO. VS. THOMAS W. ROWE, ETC., ET AL.

268 *Order Extending Time for Filing Transcript of Record in Supreme Court.*

Filed March 8, 1915.

United States Circuit Court of Appeals, Fourth Circuit.

No. 1289.

WILLIAM J. HILL, JULIUS W. CRINKEY, PETER GLASSTETTER,
George H. Ross, William Greene, William E. Silcox, Harry
Thompson, and Harry E. Walker, Appellants,

vs.

EAGLE GLASS & MANUFACTURING COMPANY, Appellee.

On Appeal by the Eagle Glass and Manufacturing Company to the
Supreme Court.

It appearing to the Court that the citation heretofore issued in this cause is returnable on the twenty-second day of March, 1915; and it further appearing to the Court that the Clerk of this Court is unable to complete the transcript of record herein and file the same on or before the return day of said citation, it is this eighth day of March, 1915, ordered that the time within which said transcript of record in this cause shall be filed in the said Supreme Court, at Washington, D. C., be, and the same is hereby extended until the twenty-second day of April, 1915.

C. A. WOODS,
U. S. Circuit Judge.

Marion, S. C., March 8, 1915.

269 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
Fourth Circuit, ss:

I, Henry T. Meloney, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the foregoing is a true transcript of the record and proceedings in the therein entitled cause as the same remains upon the records and files of the said Circuit Court of Appeals.

In testimony whereof, I hereto set my hand and affix the seal of the said United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, this 26th day of March, A. D., 1915.

[Seal United States Circuit Court of Appeals, Fourth Circuit.]

HENRY T. MELONEY,
*Clerk U. S. Circuit Court of
Appeals, Fourth Circuit.*

Endorsed on cover: File No. 24,671. U. S. Circuit Court Appeals, 4th Circuit. Term No. 109. Eagle Glass & Manufacturing Company, appellant, vs. Thomas W. Rowe, individually and as President of American Flint Glass Workers Union et al. Filed April 13th, 1915. File No. 24,671.

FILED
DEC 8 1915
JAMES O. MAREY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1914.

No. **4** **10** **28**

EAGLE GLASS AND MANUFACTURING COMPANY,
A CORPORATION,

Petitioner,

v.

THOMAS W. ROWE, individually, and as President of
AMERICAN FLINT GLASS WORKERS' UNION, et al.,

Respondents.

Petition and Motion of Eagle Glass and Manufacturing
Company, a corporation, for a Writ of Certiorari to
the United States Circuit Court of Appeals for the
Fourth Circuit.

GEORGE R. E. GILCHRIST,
Counsel for Petitioner.



Supreme Court of the United States

OCTOBER TERM, 1914.

No. 927

EAGLE GLASS AND MANUFACTURING COMPANY,
A CORPORATION, *Petitioner,*

v.

THOMAS W. ROWE, individually, and as President of
AMERICAN FLINT GLASS WORKERS' UNION, *et al.,*
Respondents.

PETITION AND MOTION FOR CERTIORARI AND BRIEF IN SUPPORT THEREOF.

The petition of Eagle Glass and Manufacturing Company for a writ of certiorari to be directed to the United States Circuit Court of Appeals for the Fourth Circuit, to bring before this Honorable Court the case No. 1289, there pending, entitled, William J. Hill, *et al.*, appellants, *v.* Eagle Glass and Manufacturing Company, appellee. In Equity, No. 1289.

*To the Honorable the Chief Justice and Associate Justices of
the Supreme Court of the United States.*

I. Your petitioner, Eagle Glass and Manufacturing Company, respectfully represents that in the District Court of the United States for the Northern District of West Virginia, the above named petitioner on July 28,

1913, commenced a suit in equity for injunctive relief against the above named respondents, averring among other things, the following:

"Your orator further says that unless enjoined by this Court, the said defendants acting individually and agreeing, confederating, combining and forming themselves into a conspiracy under the name of the American Flint Glass Workers' Union as aforesaid, will, in pursuance of their said unlawful purposes and designs, by enticement, persuasion or coercion in one form or the other, bring about the shutting down of your orator's glass factory and the ultimate destruction of its business, and will without the consent and against the will of your orator compel your orator to recognize said defendants and said union in the further transaction of its legitimate business in manufacturing and shipping its glassware and manufactured products, and will compel your orator to contract with its employes through the said defendants as officers of the said American Flint Glass Workers' Union under such rules and regulations made and enforced by said American Flint Glass Workers' Union and by said defendant officers as will enable the union to dictate the persons whom your orator shall employ and those whom your orator shall discharge, the wages your orator shall pay, and will compel your orator to agree that each of its future employes as members of the said American Flint Glass Workers' Union shall owe and yield to said union an allegiance which shall in all things be paramount to that which said employees would owe to your orator, and that they will thus take charge of, dictate the management of, and virtually control your orator's business, and thereby perpetrate acts of oppression and wrong upon your orator *which distinctly violate your orator's contractual, common law, statutory and constitutional rights as a citizen of the State of West Virginia*, and especially in view of the combination and conspiracy hereinbefore alleged to have been entered into and to exist between said American Flint Glass Workers' Union and cer-

tain manufacturers members of said Associated Manufacturers dealing with said American Flint Glass Workers' Union, to bring about the subjection of your orator's business to agreements entered into between said Associated Manufacturers and said American Flint Glass Workers' Union whereby the cost of producing said gas and electric lighting glass ware shall be so increased as to compel your orator either to cease the manufacture of that commodity or to cease selling its said gas and electric lighting glass ware at prices lower than your orator's competitors who are running union sell the same, to that trade within the United States."

An interlocutory order granting a temporary injunction, restraining the defendants from doing certain illegal acts in furtherance of their illegal scheme to unionize the plaintiff's plant, was entered by the District Court on January 17, 1914, and an appeal taken by William J. Hill and others to the Circuit Court of Appeals, which last mentioned Court reached the following conclusion:

"All the questions involved in the merits of the appeal were decided adversely to the appellee by this Court in *Mitchell v. Hitchman Coal & Coke Co.*, 214 Fed. 685."

and on said thirteenth day of January, 1915, rendered and entered a decree, which concludes with this statement:

"It is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court, in this cause be, and the same is hereby reversed, with costs; and that this cause be, and the same is hereby, remanded to the District Court of the United States for the Northern District of West Virginia, at Philippi, with directions to dissolve the injunction and dismiss the bill in accordance with the opinion of this Court."

In awarding the temporary injunction in the District Court Judge Dayton stated orally that the same proposi-

tions of law which he had applied in making perpetual the injunction in the Hitchman case would be applied to the case at bar, and that the injunctive process of the Court would run against the defendants enjoining them from doing unlawful acts of like character.

2. Your petitioner further avers that the decision of the Circuit Court of Appeals in *Mitchell v. Hitchman Coal & Coke Co.*, 214 Fed. 685, is now before this Court for appellate review by virtue of an appeal granted by Circuit Judge Pritchard, by whom on August 15, 1914, it was "ordered that an appeal to the Supreme Court of the United States from the decree heretofore filed and entered herein, be, and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits, stipulations, and all proceedings be forthwith transmitted to said Supreme Court of the United States." Petitioner further avers that such order has been fully complied with; that such certified transcript has been duly filed; and such appeal now stands as No. 617 on the docket of this court. And petitioner further avers that a petition and motion for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit has been filed by said Hitchman Coal & Coke Company in this Court, for the purpose of reviewing the decision of said Circuit Court of Appeals, and that the consideration by this Court of said petition and motion for a writ of certiorari in said Hitchman case has, by this Court, been postponed until the case shall be heard upon said appeal.

3. Petitioner further avers that it thus clearly appears from an inspection of the opinions and judgments rendered in the Hitchman case and in this case, first by said District Court in favor of petitioner, and second, by the Circuit Court of Appeals against petitioner, that "the plaintiff's declaration claimed that the controversy turned on a

construction of the laws of the United States, and both courts below dealt with the case on that assumption." Fla. Cent. & P. R. Co. v. Bell, 176 U. S. 321. Inherent in that case and in this case from the beginning and patent upon the face of the bill filed by petitioner, is the fact, entirely apart from the question of diversity of citizenship, that the contractual and property rights sought to be protected by said bill depend upon the terms of the Fifth and Fourteenth Amendments to the Constitution of the United States, and upon the terms of the Sherman Anti-Trust Law, 26 Stat. L. 209. As a citizen of West Virginia, petitioner is necessarily a citizen of the United States, and as such it is entitled to the full protection of its constitution and laws. Slaughter House Cases, 16 Wall. 36. *District Judge Dayton's opinion in the Hitchman case, applied by him orally to the Eagle case, deals from beginning to end, with the contractual and property rights of this petitioner, as protected by the terms of the Fifth and Fourteenth Amendments and by the Sherman Anti-Trust Law.* On page 34 of his opinion [Hitchman Record, p. 783] he refers directly to the case of Adair v. United States, 208 U. S. 161, with the observation that "In this latter case the Supreme Court holds such a provision 'to be an invasion of personal liberty as well as of the right of property guaranteed by the Fifth Amendment to the constitution of the United States;' " and on page 60 [Hitchman Record, p. 806] he says: "Such a combination is clearly a common law conspiracy, too far-reaching to be reasonable, in restraint of trade, as well, in my judgment, a direct violation of the Sherman Anti-Trust Law." The opinion and judgment of the Circuit Court of Appeals in the Hitchman case and in this case consists of a difference of view as to the construction and application of Federal law, constitutional and statutory, as applied by District Judge

Dayton to the facts of that case and to the facts of this case.

4. Your petitioner further avers that by reason of the foregoing the said decree of the Circuit Court of Appeals is not final, it having been settled by this court that a "judgment of the Circuit Court of Appeals cannot be held final on the ground that the jurisdiction of the Circuit Court was dependent entirely upon diverse citizenship, where the plaintiff's declaration claimed that the controversy turned on a construction of the laws of the United States, and both courts below dealt with the case on that assumption." Thus advised by counsel petitioner presented a petition to the Honorable Charles A. Woods, United States Circuit Judge for an appeal upon the ground that the decree of said court made against petitioner on January 13, 1915, is not final, for the reason that, entirely apart from the question of diverse citizenship, the merits of this case depend upon a construction of the laws of the United States, constitutional and statutory, and that both courts below dealt with the case on that assumption. After deliberate examination said Circuit Judge concluded that the contention of petitioner in that regard was well taken, recognizing the fact at the same time that there are grave and far-reaching questions of federal law involved in this record which have not so far been passed upon by this court. Acting under that conviction that Judge on February 22, 1915, "ordered that an appeal to the Supreme Court of the United States from the final decree heretofore filed and entered herein, on the thirteenth day of January, 1915, be, and the same is hereby allowed, as prayed and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to said Supreme Court of the United States." Petitioner further avers that such order has been fully complied with; that

such certified transcript has been duly filed; and such appeal now stands as No. 927 on the docket of this court.

5. Your petitioner further avers that it appears from the foregoing that while by reason of diversity of citizenship the said District Court and the said Circuit Court of Appeals for the Fourth Circuit unquestionably had jurisdiction of this cause, petitioner has always contended and contends now that the jurisdiction of the United States Courts is not dependent entirely upon the fact that the opposing parties to this suit are citizens of different States, but upon the further fact that this case is one arising under the Constitution and laws of the United States. And while petitioner and its counsel are convinced that, for that reason, the said decision and decree of said Circuit Court of Appeals is not final, yet, as the interests involved are so great, and the federal questions involved so vital and far-reaching, your petitioner has determined as a matter of prudence to apply to this Court, according to a well established practice, for a review of said final decree by certiorari, as provided in section 240 of chapter 231 of vol. 30 of the Statutes at Large. As a predicate for that application petitioner hereby submits to the Court the following statement of the case as presented in the courts below.

6. The Eagle Glass and Manufacturing Company is a West Virginia corporation, and has its principal office and place of business at Wellsburg, in the Northern District of West Virginia.

It sues individuals who are citizens of States other than West Virginia, officers or members representative of the American Flint Glass Workers' Union, a voluntary organization having national headquarters at Toledo, Ohio.

The Company employs about five hundred persons, and does an annual business of about six hundred thousand dollars.

Upon its works at Wellsburg, the Company has an outstanding bond issue of one hundred thousand dollars payable in series of six bonds of one thousand dollars each, beginning with July 1, 1915.

The Company has been engaged in its present business at Wellsburg since 1897, and its trade in its manufactured products has been for years last past and now is largely interstate.

Glassware for gas and electric lighting are its specialties, and it has contracts with many producers of light, municipal and otherwise, throughout the United States, and without West Virginia, for furnishing its manufactures for such purposes. Some of these contracts are simply for quantity; others are for quantity and for a definite period of time. And all are based upon such selling price as the Company finds itself able to sell its products for in competition with its competitors.

The American Flint Glass Workers' Union is affiliated with the American Federation of Labor, and its officers and agents exercise supervisory control over the contractual relations between its members and more than ninety-five per cent of all manufacturers of that sort of glassware throughout the United States.

The American Flint Glass Workers appropriate to themselves the term "Union." Men who belong to their organization are known as "Union" men; men who do not belong to it are "non-union" men.

Employers of labor in this sort of glass manufacture who contract with the American Flint Glass Workers' Union are known as "Union Manufacturers;" and those employers who do not do so are called "Non-Union Manufacturers."

These "Union Manufacturers" have an organization of their own which they call the "National Association

of Press and Blown Glassware Manufacturers" with headquarters in Pittsburgh, Pa., and conference agreements are from time to time entered into between the National Association of Press and Blown Glassware Manufacturers and the American Flint Glass Workers' Union relative to the scale of wages to govern and the working conditions of members of the Union while working for these Union Manufacturers.

The Eagle Glass and Manufacturing Company has always run its plant "non-union" and employs only "non-union" men. It does not belong to the National Association of Press and Blown Glassware Manufacturers. But members of that Association are its competitors in the sale of its manufactured products throughout the United States, and in and out of the State of West Virginia.

The American Flint Glass Workers' Union has made many efforts to induce the Eagle Company to run its works "Union" and to become a "Union Manufacturer." But its efforts have always been unsuccessful.

In 1900 and 1901 the struggle was acute, and the Company sought and obtained injunctive relief in the Circuit Court of Brooke County, West Virginia, against the Union's interference. That injunction was made perpetual.

Connected with and during that effort to compel the Company to run "Union" there was an explosion of nitroglycerine which had been cached in some bushes near the Company's plant whereby a number of children were killed and a number of other persons were wounded: most of the killed and injured were boys from fourteen to eighteen years of age.

During this same effort the Company suffered the loss by an incendiary fire of a large part of its works, the part destroyed being its stock building, decorating building and

office building; the only thing that was saved being the factory in which at the time the Company was making its glass.

This fire cost the Company sixty-five thousand dollars above its insurance, and the Company's loss by reason of the effort at that time to compel it to run its works "Union" amounted to one hundred thousand dollars over and above its loss of sixty-five thousand dollars through the fire mentioned.

Shortly before this suit was brought, the Company received the following letter from the defendant, Thomas W. Rowe, President of the American Flint Glass Workers' Union:

"TOLEDO, O., June 10, 1913.

MR. S. O. PAULL, *President,*
Eagle Glass Co.,
Wellsburg, W. Va.

DEAR SIR: I have frequently reflected on the many complaints that have been made by manufacturers concerning the low selling price of goods quoted by the Eagle Glass Co., and on each occasion I have wondered, would it not be a better condition for all concerned if we could make an equitable settlement with your Company to have it operated in harmony with the conference agreements entered into between the National Association of Press and Blown Glassware Manufacturers, having headquarters in Pittsburg, and the American Flint Glass Workers' Union.

The wages paid our men are not unreasonably high, the great majority of goods produced under our jurisdiction are made on the unlimited basis, the hours of labor prevailing at Flint Glass factories are long, the general conditions are such that I feel it would impose no serious hardship upon your company should it agree to unionize their plant and then co-operate with the efforts of other manufacturers towards maintaining an equitable selling price for your products.

With these thoughts in mind, I would like very much to have a conference with you, or the representatives of your company. I intend to be in Pittsburg on Friday and Saturday of this week. If I could meet you on Thursday, June 12, at your office in Wellsburg, or at some convenient place in Wheeling if that would suit you better, I would be very glad to arrange accordingly. *I would like you to wire me at once if it is agreeable to you to hold such a meeting.*

Our mutual friend, Mr. J. H. Mathews of Wellsburg advised me to try to arrange a meeting with you, as he thought that probably if we conferred we might be able to reach a satisfactory conclusion.

Sincerely trusting I will receive a favorable reply, I am,

Yours very truly,

T. W. ROWE."

To this proposal the Company wired Rowe:

"Letter received. Impossible to arrange to meet you."

Following that each of its employees who remained in its employ contracted with the Company that while in the Company's employ such employee would not become a member of the American Flint Glass Workers' Union, and in return for that the Company contracted with each of its employees who remained in its employ that while in the Company's employ the Company would run its works "non-union." Evidentiary of this each employee signed an employment card of which, minus the date and signature, the following is a copy:

"WELLSBURG, W. VA.,

I am employed by, and work for, the Eagle Glass and Manufacturing Company, with the express understanding that I am not a member of the American Flint Glass Workers' Union, and will not become so while an employee of the Eagle Glass and Manufacturing Company, and that the Eagle Glass and Manufacturing Company is run non-union, and

agrees with me that it will run non-union while I am in its employ. If at any time while I am employed by the Eagle Glass and Manufacturing Company I want to become connected with the American Flint Glass Workers' Union, or any affiliated organization, I agree to withdraw from the employment of said company, and I agree that while I am an employee of that company, I will not make any effort amongst its employees to bring about the unionizing of that Company's glass and manufacturing plant against that Company's wish.

I have either read the above or heard the same read.

....."

The American Flint Glass Workers' Union sent Joseph Gillolly, one of its four official organizers to Wellsburg to try to unionize the Company's plant, and he went actively and in person to work amongst the Company's employees.

He tried to induce employees to quit working for the Company and in some instances succeeded. He resorted to misrepresentation and false statements concerning the Company. He sought to coerce employees to leave the Company's service, and paid money to employees of the Company for the sole purpose of inducing them to leave its employment. He was early made fully acquainted with the contractual arrangements existing between the Company and its employees relative to their joining his Union while in the Company's employ. But he defied the Company and with ridicule ignored the contracts the Company had with its employees. He openly and boldly justified himself in all he did, contending that, as an officer or agent of the Union, he had a perfect right to interfere with the Company's employees, persuade them to join the Union and secretly swear them in as members.

Under these circumstances the Company applied for and ultimately obtained the temporary injunction hereinbefore mentioned.

Your petitioner presents herewith as a part of this petition a brief containing an exposition of the questions of law involved, and a certified transcript of the entire record of said cause in said Circuit Court of Appeals, supplemented by the original documents covered by stipulation of counsel. [Record, pp. 240, 241].

Wherefore your petitioner prays that a writ of certiorari issue out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Fourth Circuit, demanding said Court to certify and to send to this Court on a day certain to be therein designated a full and complete transcript of the record and all proceedings of said Court of Appeals in this case, which was entitled in that Court, "William J. Hill, *et al.*, Appellants *v.* Eagle Glass and Manufacturing Company, Appellee, In Equity, No. 1289," to the end that this cause may be reviewed and determined by this Court as provided by law, and that your petitioner may have such other and further relief or remedy in the premises as this Court may deem proper, and that said decree and judgment of the Circuit Court of Appeals may be reversed by this Honorable Court. Petitioner further prays that the transcript of the record on the appeal heretofore described as No. 927 be allowed to stand as a return to the writ of certiorari to be issued herein, the same containing all the essential papers and records for such submission and for such return. And your petitioner will ever pray, etc.

EAGLE GLASS AND MANUFACTURING COMPANY,
a corporation.

By GEORGE R. E. GILCHRIST,
Of its Counsel,
Counsel and Solicitor for Petitioner.

District Court of Columbia, }
City of Washington. } ss.

George R. E. Gilchrist being duly sworn, deposes and says that he is the counsel for said petitioner, Eagle Glass and Manufacturing Company, a corporation; that he prepared the foregoing petition, and that the allegations thereof are true, as he verily believes; that in his opinion the petition is well founded as to matters of fact and as to matters of law, and that the case is such that the prayer in the petition should be granted by this Honorable Court.

GEORGE R. E. GILCHRIST.

Subscribed and sworn to before me this sixteenth day of April, 1915.

LULA M. DRENNAN,
Notary Public, D. C.

[SEAL.]

My commission expires July 16, 1918.

I, George R. E. Gilchrist, a member of the bar of this Honorable Court, hereby certify that I prepared the foregoing petition for certiorari; that the same is not for the purpose of delay, and that in my opinion said petition is meritorious and well founded in law, and ought to be granted and the writ issue.

GEORGE R. E. GILCHRIST,
Counsel for Petitioner.

THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

EAGLE GLASS AND MANUFACTURING COMPANY,
A CORPORATION,

Petitioner,

v.

WILLIAM J. HILL, *et al.*,

Respondents.

Comes now said petitioner, the Eagle Glass and Manufacturing Company, by its undersigned counsel, and moves this Honorable Court to require by writ of certiorari or other proper process directed to the Honorable the Judges of the United States Circuit Court of Appeals for the Fourth Circuit, the said Court to certify to this Court for its review and determination a certain cause in said Court of Appeals lately pending, wherein the respondents, William J. Hill, *et al.*, were Appellants, and your petitioner, the Eagle Glass and Manufacturing Company was Appellee; and to that end now presents herewith its petition, with a certified copy of the entire record in said cause as it is in said Circuit Court of Appeals, supplemented by the original documents heretofore described.

GEORGE R. E. GILCHRIST,
Counsel for Petitioner.

BRIEF.

I.

**WHY THE WRIT OF CERTIORARI SHOULD BE GRANTED
IN THIS CASE.**

It is well settled that this Court will require a case to be certified by the Circuit Court of Appeals when the questions involved are of "gravity and general importance," affecting the interest of the nation in its internal or external relations; or in the interest of uniformity of decision. *Ex parte Lau Ow Bew*, 141 U. S. 583; *The Conqueror*, 166 U. S. 114; *Forsythe v. Hammond*, 166 U. S. 514; *Montana Min. Co. v. St. Louis Min. and M. Co.* 204 U. S. 204. No more conclusive evidence can be given of the "gravity and general importance" of the vital and far-reaching questions involved in this case than that contained in the extended and exhaustive discussions of them in the *Hitchman* case contained in the learned opinions delivered in the District Court and in the Circuit Court of Appeals, and by each reaffirmed and reapplied in this case. And we respectfully submit that, apart from the testimony thus given by both of the lower courts as to the "gravity and general importance" of the questions involved in this case, the Court will find from the following argument that a far-reaching question of federal law, touching the relations of capital and labor, is involved in this record which has never been passed upon by this Court.

II.

THE DECISION OF THE CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT VIOLATES RIGHTS OF THE EAGLE GLASS AND MANUFACTURING COMPANY WHICH ARE SECURED TO IT BY THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

The Fifth Amendment of the Constitution of the United States contains this clause:

"Nor [shall any person] be deprived of life, liberty, or property, without due process of law."

9 F. S. A., p. 288.

"A similar clause, as an inhibition on the states, is contained in the Fourteenth Amendment."

Note 1, 9 F. S. A., p. 288.

On page 289 of 9 F. S. A., it is said of the foregoing language of Amendment Five:

"This amendment only announces and reaffirms the ancient principles of the common law, and prevents them from being unjustly invaded by the power of the federal government."

North Carolina v. Vanderford (1888) 35 Fed. Rep. 282.

On page 290, 9 F. S. A., it is said that this provision of the Fifth Amendment has application to corporations as well as to natural persons.

"VI. Application to Corporations.—From the nature of the prohibitions in this amendment it would seem, with the exception of the last clause, as though they would only apply to natural persons. No others can be witnesses; no others can be twice put in jeopardy of life or limb, or compelled to be witnesses against themselves; and therefore it might be said with much force that the word 'person,' there used in connection

with the prohibition against the deprivation of life, liberty, and property without due process of law, is in like manner limited to a natural person. But such has not been the construction of the courts. A similar provision is found in nearly all of the state constitutions; and everywhere, and at all times, and in all courts, it has been held, either by tacit assent or express adjudication, to extend, so far as their property is concerned, to corporations. And this has been because the property of a corporation is in fact the property of the corporators. To deprive the corporation of its property, or to burden it, is, in fact, to deprive the corporators of their property or to lessen its value."

Railroad Tax Cases (1882), 13 Fed. Rep. 746. *See also* Santa Clara County v. Southern Pac. R. Co. (1883), 18 Fed. Rep. 389, affirmed on other grounds (1886), 118 U. S. 394.

"This amendment contains a prohibition upon the Government of the United States, similar to the one in the Fourteenth Amendment against the action of the States, declaring that no person shall be deprived of life, liberty, or property, without due process of law; and it has been assumed, if not expressly held, that the provision protects the property of corporations against confiscation equally with that of individuals. *San Mateo County v. Southern Pac. R. Co.* (1882), 13 Fed. Rep., 151."

9 F. S. A., 290, VI.

In considering how far the rights of the Eagle Glass and Manufacturing Company can be said to be affected and to be protected by the Constitutional provision above quoted, the following language taken from 9 F. S. A., page 303, and the case cited there as authority for the proposition, there advanced, tend to show that it is correct to claim on behalf of the Eagle Company that the decision of the Circuit Court of Appeals for the Fourth Circuit professing to state and to apply the common law of West Virginia upon the subject of contract [but really mis-

plying West Virginia law, as that law is declared to be the Supreme Court of Appeals of that State in the case *Thacker Coal & Coke Company v. Burke* (1906), W. Va. 253; 53 S. E. 161; 8 A. & E. Ann. Cas. 885], violates the rights of the Eagle Glass and Manufacturing Company as guaranteed to it by the above quoted language of the Fifth Amendment of the Constitution of the United States.

"14. Giving Unwarranted Effect to Decision of State Court—A judgment of the Circuit Court of the United States claiming to give such unwarranted effect to a decision of a state court as to wrongfully deprive a party of his property, may be considered as presenting a question how far it can be sustained in view of the prohibitory language of this clause."

Fayerweather v. Ritch (1904), 195 U. S. 208.

A later discussion of the doctrine announced in *Fayerweather v. Ritch* will be found in the case of *Hannah O'Callaghan, et al. v. Terence O'Brien, admr., etc., et als.* (1905), 199 U. S. 89, 50 L. ed. 101, 25 S. C. 727. (Officially reported under the title of "*Farrell v. O'Brien.*")

The case of *Hovey* against *Elliott*, decided by the Supreme Court of the United States (1897), 167 U. S. 409, 2 L. ed. 215, disposes of the question as to whether the decision of the Federal Court can be said to violate rights of a citizen guaranteed to him by the foregoing provision of Amendment Five to the Constitution of the United States.

Mr. Justice White delivering the opinion of the Court in speaking on that particular point says:

"If the legislative department of the Government were to enact a statute conferring the right to condemn the citizen without any opportunity whatever of being heard, would it be pretended that such an enactment would not be violative of the Constitu-

tion? If this be true, as it undoubtedly is, how can it be said that the judicial department, the source and fountain of justice itself, has yet the authority to render lawful that which if done under express legislative sanction would be violative of the Constitution. If such power obtains, then the judicial department of the government sitting to uphold and enforce the Constitution is the only one possessing a power to disregard it. If such authority exists then in consequence of their establishment, to compel obedience to law and to enforce justice, courts possess the right to inflict the very wrongs which they were created to prevent."

Hovey v. Elliott. (Decided May 24, 1897.) 167 U. S. 409, 417. 42 L. Ed. 215, 221.

It seems clear, therefore, that the quoted portion of Amendment Five restrains the judicial as well as the executive branches of the Federal Government, and, therefore, the rights of the Eagle Company may fairly be said to have been violated by the decision of the Circuit Court of Appeals for the Fourth Circuit.

It remains, however, to be considered whether the right violated is one of sufficient merit to justify the Supreme Court in granting or considering an appeal from the Circuit Court of Appeals either through an appeal proper or through an application for a writ of certiorari.

The right to do business and liberty of contract are involved in this case, and both of those rights are believed to have been violated by the decision of the Fourth Circuit Court of Appeals.

And that these rights are regarded as important rights is evidenced by the fact that they are guaranteed to citizens, not only by the Constitution of the United States as shown by the provisions of Amendment Five and Amendment Fourteen to the Constitution of the United

ates, but by the fact that they are also guaranteed to citizens by the Constitution of the State of West Virginia. Bill of Rights, §1. Art. III, Constitution of West Virginia:

"All men are, by nature, equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, be deprived or divest their posterity, namely: the enjoyment of life and liberty, with the means of acquiring and possessing property, and of pursuing and obtaining happiness and safety."

Bill of Rights, § 10, Art. III., Constitution of West Virginia:

"No person shall be deprived of life, liberty, or property without due process of law, or the judgment of his peers."

In State v. Goodwill (1889), 33 W. Va., 179; 10 S. E., 285, 287; 6 L. R. A., 621; 25 Am. St. Rep., 863, it is said:

"A person living under the protection of this government has the right to adopt and follow any lawful industrial pursuit, not injurious to the community, which he may see fit. *And, as incident to this, is the right to labor or employ labor; make contracts in respect thereto, upon such terms as may be agreed upon by the parties; to enforce all lawful contracts; to sue, and give evidence; and to inherit, purchase, lease, sell, and convey property of every kind.* The enjoyment or deprivation of these rights and privileges constitutes the essential distinction between freedom and slavery; between liberty and oppression."

and again—

"The vocation of an employer, as well as that of his employe, is his property. Depriving the owner of property of one of its attributes is depriving him of

his property, under the provisions of the constitution. *People v. Otis*, 90 N. Y. 48. The right to use, buy, and sell property, and contract in respect thereto, including contracts for labor—which is, as we have seen, property—is protected by the constitution. If the legislature without any public necessity, has the power to prohibit or restrict the right of contract between private persons in respect to one lawful trade or business, then it may prevent the prosecution of all trades, and regulate all contracts."

and in the same case—

"The rights of every individual must stand or fall by the same rule of law that governs every other member of the body politic under similar circumstances; and every partial or private law which directly proposes to destroy or affect individual rights, or does the same thing by restricting the privileges of certain classes of citizens and not of others when there is no public necessity for such discrimination, is unconstitutional and void."

State v. Goodwill, 32 W. Va. 179, *supra*.

These principles underlie the Declaration of Independence, and naturally and logically are embraced in our scheme of government, National and State.

And the decisions of the Supreme Court of Appeals of West Virginia interpreting the Bill of Rights of the Constitution of that State have their parallel in decisions of the Supreme Court of the United States upon the meaning and scope of the guaranties of the Federal Constitution as expressed in the Fifth and in the Fourteenth Amendments thereto.

Upon parallel provisions of the Constitution of the United States, Mr. Justice Field concurring with the opinion of the Court, which was delivered by Mr. Justice Miller, in *Butchers' Union, etc., Co. v. Crescent City, etc.,*

Co. (1884), 111 U. S. 746; 28 L. Ed. 585, 591; 4 S. C. 652, said:

"As in our intercourse with our fellow-men certain principles of morality are assumed to exist, without which society would be impossible, so certain inherent rights lie at the foundation of all governmental action, and upon a recognition of them alone can free institutions be maintained. These inherent rights have never been more happily expressed than in the Declaration of Independence, that new evangel of liberty to the people: 'We hold these truths to be self evident,' that is, so plain that their truth is recognized upon their mere statement, 'that all men are endowed;' not by edicts of Emperors or decrees of Parliament or Acts of Congress, but, 'by their Creator, with certain inalienable rights' that is, rights which cannot be bartered away or given away or taken away except in punishment of crime; 'and that among these are life, liberty and the pursuit of happiness, and to secure these,' not grant them but secure them, 'governments are instituted among men, deriving their just powers from the consent of the governed.'

"Among these inalienable rights, as proclaimed in that great document, is the right of men to pursue their happiness, by which is meant the right to pursue any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their prosperity or develop their faculties, so as to give to them their highest enjoyment.

"The common business and callings of life, the ordinary trades and pursuits, which are innocuous in themselves and have been followed in all communities from time immemorial, must, therefore, be free in this country to all alike upon the same conditions. The right to pursue them, without let or hindrance except that which is applied to all persons of the same age, sex and condition, is a distinguishing privilege of citizens of the United States, and an essential element of that freedom which they claim as their birthright."

In the same case, Mr. Justice Bradley, concurring, with whom concurred Mr. Justice Harlan and Mr. Justice Woods (111 U. S. 762; 28 L. ed. 589), said:

"The right to follow any of the common occupations of life is an inalienable right; it was formulated as such under the phrase 'pursuit of happiness' in the Declaration of Independence, which commenced with the fundamental proposition that 'All men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness.' This right is a large ingredient in the civil liberty of the citizen. To deny it to all but a few favored individuals, by investing the latter with a monopoly, is to invade one of the fundamental privileges of the citizen, contrary not only to common right, but, as I think, to the express words of the Constitution. It is what no Legislature has a right to do."

In *Allgeyer et al. v. State of Louisiana* (1897), 165 U. S. 578, 589; 41 L. ed. 832, 835; 17 S. C. 427, Mr. Justice Peckham delivering the opinion of the Court said of the meaning of the word "liberty"—

"The term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned."

In *Lochner v. People of the State of New York* (1905), 198 U. S. 45, 56; 49 L. ed. 937, 940, 941, 25 S. C. 539, Mr. Justice Peckham delivering the opinion of the Court said:

"The general right to make a contract in relation to his business is part of the liberty of the individual

protected by the 14th Amendment of the Federal Constitution."

And again said:

"Of course the liberty of contract relating to labor includes both parties to it. The one has as much right to purchase as the other to sell labor."

In case of *Adair v. United States* (1907), 208 U. S. 161, 52 L. ed. 436, the Supreme Court indicated that it regarded the controversy in that case as a meritorious one. And Mr. Justice Harlan delivering the opinion of the Court said:

"May Congress make it a criminal offense against the United States—as, by the 10th section of the act of 1898, it does—for an agent or officer of an interstate carrier, having full authority in the premises from the carrier, to discharge an employee from service simply because of his membership in a labor organization?"

"This question is admittedly one of importance, and has been examined with care and deliberation. And the court has reached a conclusion which, in its judgment, is consistent with both the words and spirit of the Constitution, and is sustained as well by sound reason."

52 L. Ed. 441.

And he added:

"The first inquiry is whether the part of the 10th section of the act of 1898 upon which the first count of the indictment was based is repugnant to the Fifth Amendment of the Constitution, declaring that no person shall be deprived of liberty or property without due process of law. In our opinion that section, in the particular mentioned, is an invasion of the personal liberty, as well as of the right of property, guaranteed by that Amendment. Such liberty and right embrace the right to make contracts for the purchase of the labor of others, and equally the right to make contracts for the sale of one's own labor;

each right, however, being subject to the fundamental condition that no contract, whatever its subject-matter, can be sustained which the law, upon reasonable grounds, forbids as inconsistent with the public interests, or as hurtful to the public order, or as detrimental to the common good. This court has said that 'in every well-ordered society, charged with the duty of conserving the safety of its members, the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand.' *Jacobson v. Massachusetts*, 197 U. S. 11, 29, 49 L. ed. 643, 651, 25 Sup. Ct. Rep. 358, 362, and authorities there cited. Without stopping to consider what would have been the rights of the railroad company under the Fifth Amendment, had it been indicted under the Act of Congress, it is sufficient in this case to say that, as agent of the railroad company, and, as such, responsible for the conduct of the business of one of its departments, it was the defendant Adair's right—and that right inhered in his personal liberty, and was also a right of property—to serve his employer as best he could, so long as he did nothing that was reasonably forbidden by law as injurious to the public interests. It was the right of the defendant to prescribe the terms upon which the services of Coppage would be accepted, and it was the right of Coppage to become or not, as he chose, an employee of the railroad company upon the terms, offered to him. Mr. Cooley, in his treatise on Torts, p. 278, well says: 'It is a part of every man's civil rights that he be left at liberty to refuse business relations with any person whomsoever, whether the refusal rest upon reason, or is the result of whim, caprice, prejudice, or malice. With his reasons neither the public nor third persons have any legal concern. It is also his right to have business relations with anyone with whom he can make contracts, and, if he is wrongfully deprived of this right by others, he is entitled to redress.'"

It will be seen from the foregoing that the constitutional provisions of the Federal Constitution and the provisions of the Constitution of the State of West Virginia are in substance the same, and it will also be seen that the interpretation placed upon the provisions of the Constitution of the United States by the Supreme Court of the United States and the interpretation placed upon the Constitution of the State of West Virginia by the Supreme Court of Appeals of that State are parallel if not identical.

While, however, it is plain enough that the Circuit Court of Appeals should have followed the general principles laid down by the decisions of the Supreme Court of the United States referred to in interpreting rights of the plaintiff which are shown to be rights guaranteed to it by the Constitution of the United States and the amendments thereto, it does not yet appear what the obligation of the Circuit Court of Appeals for the Fourth Circuit was with respect to rights guaranteed to the Eagle Company by the Constitution of the State of West Virginia.

This last subject is covered by the case of *Loeb v. Trustees of Columbia Township* (1900), 179 U. S. 472, 45 L. ed. 280, holding that Federal courts in determining contract rights as affected by a state Constitution will enforce the contract in accordance with the Constitution of the State, as interpreted at the time the contract was made by the highest court of the State.

In deciding that case, Mr. Justice Harlan said:

"As, however, the circuit courts of the United States are courts of 'an independent jurisdiction in the administration of state laws co-ordinate with, and not sub-ordinate to, that of the State courts, and are bound to exercise their own judgment as to the meaning and effect of those laws' (*Burgess v. Seligman* 107 U. S. 20, 33, 34, 27 L. ed. 359, 365, 2 Sup. Ct. Rep. 10; *Folsom v. Township Ninety-six*, 159 U. S.,

611, 624, 625, 40 L. ed. 278, 283, 16 Sup. Ct. Rep. 174), they may, in suits within their jurisdiction, properly hold, as in numerous cases this court has held, that the rights of parties arising under contracts not involving questions of a Federal nature are to be determined in accordance with the settled principles of local law as maintained by the highest court of the state at the time such rights accrued."

45 L. ed. 291.

The real controversy between the Eagle Company, on the one side, and the defendants, on the other side, arises out of an effort on the part of the defendants, representing the American Flint Glass Workers' Union, to induce the Eagle Company's employees to become members of their Union, and thus to enable the American Flint Glass Workers' Union to compel the Eagle Company to operate what is called a union factory, that is, to operate a glass factory by making a contract with the American Flint Glass Workers' Union, and on the part of the Eagle Company the controversy is due to the effort of the Eagle Company to keep from having its employees join that Union and to keep from being obliged to run a union glass factory and to have to contract with these defendants as representatives of the American Flint Glass Workers' Union.

In its effort to keep in position to be able to run a non-union glass factory, the Eagle Company contracts with each of its employees along certain lines, and the net result is embodied in the following memorandum card:

"WELLSBURG, W. VA., _____.

I am employed by, and work for, the Eagle Glass & Manufacturing Company, with the express understanding that I am not a member of the American Flint Glass Workers' Union, and will not become so while an employe of the Eagle Glass & Manufacturing Company, and that the Eagle Glass & Manufacturing Company is run non-union, and agrees

with me that it will run non-union while I am in its employ. If at any time while I am employed by the Eagle Glass & Manufacturing Company I want to become connected with the American Flint Glass Workers' Union, or any affiliated organization, I agree to withdraw from the employment of said company, and I agree that while I am an employe of that Company, I will not make any effort amongst its employes to bring about the unionizing of that company's glass and manufacturing plant against that company's wish.

I have either read the above or heard the same read.

Identically the same contract is involved in the Hitchman case now before this Court. No. 617.

Hitchman Coal & Coke Co. v. Mitchell, 202 Fed. 512, 553.

The District Court of the United States for the Northern District of West Virginia held that this was a lawful contract.

"An employer and its employes may lawfully contract with respect to the terms of the employment, and as incidental thereto that the employes shall not join a labor union and the employer shall not employ union men; and, when such a contract has been made, a combination between officers or members of the labor union to induce either party to violate the contract, with which they have no rightful concern, constitutes an unlawful conspiracy, to restrain the carrying out of which the other party is entitled to an injunction."

Hitchman Coal & Coke Co. v. Mitchell *et al.* (Circuit Court, N. D. West Virginia. September 21, 1909.) 172 Fed. 963, Syl. 2.

The defendants in the Hitchman case upon appeal to the Circuit Court of Appeals for the Fourth Circuit against

the foregoing decision, as to the legitimacy of such a contract, set up in their assignment of errors the following: The District Court erred —

“ In holding that the defendants had not the lawful right to use argument, reason and persuasion to solicit, invite or peaceably induce the plaintiff’s employes to become members of the United Mine Workers of America; or to use any lawful means to have the employes of the plaintiff become members of the said labor organization.” *Hitchman*, Record p. 844.

“ In finding and holding that the defendants were attempting to interfere with the contracts existing between the plaintiff and its employes, and attempting to induce said employes to break said contracts.” *Hitchman*, Record p. 844.

“ In holding that the plaintiff had entered into lawful contracts with its employes—contracts not in contravention of public policy—and that the plaintiff is entitled to be protected by a court of equity in the enforcement of its said contracts.” *Hitchman*, Record p. 845.

“ In declining to hold and adjudicate that the various contracts entered into between the plaintiff in this suit and its employes, were contrary to law, and against public policy, and illegal and void.” *Hitchman* Record p. 845.

The Circuit Court of Appeals in the *Hitchman* case in considering this contract, did not reach the conclusion that the contract was unlawful, but did hold that an outsider, a stranger to the contract, could by peaceable means induce a breach thereof by one of the parties thereto. That Court said:

“ The Court below also reached the conclusion that the defendants have caused and are attempting to cause the non-union members employed by the plaintiff to break a contract which it has with the non-union operators. The contract in question is in the following language:

" 'I am employed by and work for the Hitchman Coal & Coke Company with the express understanding that I am not a member of the United Mine Workers of America, and will not become so while an employe of the Hitchman Coal & Coke Company; that the Hitchman Coal & Coke Company is run non-union and agrees with me that it will run non-union while I am in its employ. If at any time while I am employed by the Hitchman Coal & Coke Company I want to become connected with the United Mine Workers of America, or any affiliated organization, I agree to withdraw from the employment of said company, and agree that while I am in the employ of that company that I will not make any efforts amongst its employes to bring about the unionizing of that mine against the company's wish. I have either read the above or heard the same read.'"

"It will be observed that by the terms of the contract that either of the parties thereto may at will terminate the same, and while it is provided that so long as the employe continues to work for the plaintiff he shall not join this organization, nevertheless, there is nothing in the contract which requires such employes to work for any fixed or definite period. If at any time after employment any of them should decide to join the defendant organization, the plaintiff could not, under the contract, recover damages for a breach of the same. In other words, the employes under this contract may, if they deem proper, at any moment join a labor union, and the only penalty provided therefor is that they cannot secure further employment from the plaintiff. Therefore, under this contract, if the non-union men, or any of them, should see fit to join the United Mine Workers of America on account of lawful and persuasive methods on the part of the defendants, and as a result of such action on their part were to be discharged by the plaintiff, it could not maintain an action against them on account of such conduct on their part. Such being the case it would be unreasonable to hold that the action of the defendants would render the United

Mine Workers of America liable in damages to the plaintiff because they had employed lawful methods to induce the non-union miners to become members of their organization.

"Under these circumstances we fail to see how this contract can be taken as a basis for restraining the defendants from using lawful methods for the purpose of inducing the parties to the contract to join the organization." *Hitchman*, Record pp. 892, 893.

It will be noticed that the conclusion reached by the Circuit Court of Appeals is based upon the proposition that it is lawful by peaceable means to persuade an employee at will to quit work.

And yet the Supreme Court of Appeals of West Virginia in the case of *Thacker Coal & Coke Company v. Burke* (1906), 59 W. Va. 253, 53 S. E. 161, 5 L. R. A. (N. S.) 1091, 6 A. & E. Ann. Cas. 885, held:

"One who maliciously entices a servant in actual service of a master to desert and quit his service is liable to action therefor."

"If one wantonly and maliciously, whether for his own benefit or not, induces a person to violate his contract with a third person to the injury of that third person, it is actionable."

"Persons who conspire to induce others to break a valid contract between other persons are liable to action therefor."

"The act found in Code, 1899, § 14, appendix, p. 1053, does not authorize any individual, or number of individuals, to maliciously entice servants to desert service in which they are engaged, or to prevent them from engaging in such service under a contract for such service."

Id., 5 L. R. A. (N. S.) 1091, 1092. Syl. 1, 2, 3, 4.

Judge Brannon, in delivering the opinion of the Court in the *Thacker* case, said:

"The Thacker Coal & Coke Company filed a declaration in trespass on the case in the Circuit Court of Mingo County against Charles Burke and five others for damages for enticing servants from the plaintiff's service, which declaration upon demurrer was dismissed, and the company sued out a writ of error.

"Certain legal principles control the case. In *West Virginia Transp. Co. v. Standard Oil Co.*, 50 W. Va. 611, 56 L. R. A. 804, 88 Am. St. Rep. 895, 40 S. E. 591, we find it stated, on authority there given, that 'if one wantonly and maliciously, whether for his own benefit or not, induce a person to violate his contract with a third person to the injury of that third person, it is actionable.' We find that holding confirmed in *Angle v. Chicago, St. P. M. & O. R. Co.*, 151 U. S. 1, 38 L. ed. 55, 14 Sup. Ct. Rep. 240, in the language following: 'If one maliciously interferes in a contract between two parties, and induces one of them to break that contract, to the injury of the other, the party injured can maintain an action against the wrongdoer. When a man does an act which in law and fact is a wrongful act, and injury to another results from it as a natural and probable consequence, an action on the case will lie.' If additional authority were needed for such a proposition of common sense and justice, see the case decided by the highest English tribunal in 1901, *Quinn v. Leathem* (1901), A. C. 495. What I have already said refers to contracts in general. As to the particular contract between master and servant, the law is, if possible, yet more decided. The common law says that one who causes a breach of that contract is liable to damages. It has been said by some that action in such case lies only by reason of the act of Parliament in the reign of Edward III, A. D. 1350, making the act of enticement of a servant from his employer wrongful. If so, we might hesitate in saying that it is actionable in West Virginia; but I assert, believing that I am supported by ample authority, that action is given in such case by the

common law. So the text writers and courts treat it. In Comyns's Digest, title 'Action on the Case,' A. p. 278, the common law rule is thus stated: 'In all cases where a man has a temporal loss or damage by the wrong of another, he may have an action upon the case to be repaired in damages.' The Supreme Court of the United States, in *Angle v. Chicago, St. P. M. & O. R. Co.* *supra*, stated the rule thus: 'Wherever a man does an act which in law and in fact is a wrongful act, and such an act as may, as a natural and probable consequence of it, produce injury to another, and which in the particular case does produce such an injury, an action on the case will lie.' It is generally treated as a common-law cause of action. The general principle applicable to contracts in general would give action against a third party for wrongfully causing the breach of contract between master and servant; but as to this particular contract the law has been long settled:

"I cite the following authorities: 'It is well settled that any person who knowingly entices away the servant of another, and thereby induces him to violate his contract with his master, or who thereby deprives the master of the services of one then actually in his service, whether under a contract to serve or not, is liable to the master for his actual loss therefrom. But in this action it is necessary to prove not only that the person employed was in the service of the plaintiff, but also that the defendant, knowing the fact, wrongfully induced him to leave it. The intent of the defendant, and the natural or actual effect of its execution, is the gist of the action; and, unless the declaration discloses that the act was done intentionally or wilfully, and that it actually did, or was calculated to, cause damage to the plaintiff, and that it was done without right or justifiable cause, no recovery can be had. Malice is inferred from the wrongful character of the act, and the declaration or complaint must disclose such facts as support the inference. If a contract to serve is established, actual service under the contract need not be shown.

It is enough to show that the defendant, with notice of the servant's contract obligation to the plaintiff, has persuaded him not to enter into the plaintiff's service under it.' Wood, Mast. & S. §§ 230, 231. 'The idea of interference with contract relations as a specific tort is of recent origin. The materials from which the generalization was worked out are found in several lines of precedents. From an early day it has been established that a master may maintain an action against one who entices away his servant or harbors and detains him with knowledge of his former contract.' 16 Am. & Eng. Enc. Law, 2d ed. p. 1109. 'Certainly since the statute of laborers the common law has recognized the right of a master to recover for the actual damage he may have suffered by the wrongful interference by a third person with his relationship to his servant by personal injury to the servant, or otherwise depriving the master, in whole or in part, of his service. * * *

Actions for enticing servants from their employer, and for knowingly harboring servants who had previously left their employer, arose after the first statute of laborers. They survive its repeal, and occur in modern practice. Knowingly enticing from the service of another one who is employed under a contract not fully executed is an actionable wrong. Indeed, from this basis there has grown up a branch of law in which malice is an essential ingredient.' Jaggard, Torts, § 155. 'To the relation between master and servant, and the rights accruing therefrom, there are two species of injuries incident. The one is retaining a man's hired servant before his time is expired; the other is beating or confining him in such a manner that he is not able to perform his work. As to the first, the retaining another person's servant during the time he has agreed to serve his present master. This, as it is an ungentlemanlike, so it is also an illegal, act; for every master has by his contract purchased for a valuable consideration the service of his domestics for a limited time. The

inveigling or hiring his servant, which induces a breach of this contract, is therefore an injury to the master, and for that injury the law has given him a remedy by a special action on the case; and he may also have an action against the servant for the non-performance of his agreement. But, if the new master was not apprised of the former contract, no action lies against him unless he refuses to restore the servant upon demand.' Bl. Com. bk. 2, 142.

"I deem it useless to occupy space by quotation from other text-books and decisions to prove the doctrine above stated. They all lay down the law to the same effect. 2 Kinkead, Torts, § 457; 3 Page, Contr. §§ 1326, 1327; 11 Am. St. Rep. 378, 474, notes; Schouler, Dom. Rel. § 487; *Moran v. Dunphy*, 177 Mass. 485, 52 L. R. A. 115, 83 Am. St. Rep. 289, 59 N. E. 125; *Bowen v. Hall*, L. R. 6 Q. B. Div. 333; *Walker v. Cronin*, 107 Mass. 555; *Quinn v. Leathem* (1901), A. C. 495; *Taff Vale R. Co. v. Amalgamated Soc.* (1901), A. C. 426. Hammon on Contracts, § 350, says: 'The duty to respect the contractual tie so far as not to interfere with it rests upon all the world. Thus it is everywhere agreed that it is an actionable wrong to entice away a man's servant from his employment. Independently of any right to sue the servant for breach of the contract of employment, the master may hold the guilty person liable in damages for thus wrongfully inducing the servant to sever the relation. Many courts indeed go further, and lay down the broad principle that a man who justifiably induces one of two parties to a contract to break it, intending thereby to injure the other or to obtain a benefit for himself, does that other a wrong, for which he must respond in damages.'

"The first count of the declaration alleges that the company is owner and operator of a coal mine, and was engaged on the 8th day of August, 1901, in the business of mining coal from the mine; that, in order to carry on the business, it was necessary for the plaintiff to employ, and it did employ, a large number of men to work in the mine, who were engaged in the

company's service in working the mine and loading coal on railroad cars for shipment to parties with whom the plaintiff had contracts to furnish coal; that the defendants, well knowing these facts, but contriving and wickedly and maliciously intending to injure the plaintiff in its business, unlawfully, wrongfully, maliciously, without justifiable cause, without the consent and against the will of the plaintiff, molested, obstructed, and hindered the plaintiff in its said business 'by wilfully, wrongfully, and maliciously persuading, inducing, enticing, and procuring said servants of the plaintiff, employed as aforesaid, to absent themselves and depart from the plaintiff's service;' that on pretext, and by reason of such persuasion, enticement, and procuration, the said servants on the date aforesaid, without license and against the will and consent of the plaintiff, wrongfully absented themselves and departed from said service, and continued to do so; that the plaintiff was unable to employ other servants to work in its mine in the place of the servants so enticed away, and was thereby prevented from prosecuting and carrying on its business as extensively and profitably as it could and would have done had not its servants been induced and enticed by the defendants to quit its service. The first count does not, in words, state an express contract for service between employer and employe. By the language used in the books a contract must exist. This count says the miners were 'employed' by the plaintiff and in actual service. *Now, if the law gives action for enticement of a servant, it is not conceivable that a third person can maliciously entice away a lot of employes simply because there was no contract fixing term of service. The relation of master and servant exists. In such case there is a contract recognized by law, an implied contract by which the employe can recover for his service. By entering such service the employe agrees, contracts, to work. It is NO DIFFERENCE THAT HE CAN QUIT WHEN HE PLEASES."*

Id., 5 L. R. A. (N. S.) 1094-1101.

The Circuit Court of Appeals in not having held the contract unlawful must be considered as having held the contract to be lawful.

The question then arises what would be a breach of the contract by the employee. It would not be a breach of a contract by the employee for the employee to quit service, because under the express terms of the contract that right is expressly reserved to him. It would, however, be a breach of his contract for the employee to join the Union while in the employ of the Eagle Company. And such action could be enjoined following the precedent laid down in the case of *Lumley v. Wagner* which was a companion case of the celebrated case of *Lumley v. Gye*.

The common law on this subject is well laid down in 20 Halsbury's Laws of England, page 114.

"Where, however, the contract of service includes a negative stipulation by which the master or the servant binds himself not to do a specific act, the court, while declining to enforce specific performance of the contract as a whole, will enforce the negative stipulation, and will restrain the master or servant by injunction from committing a breach thereof. The negative stipulation must, however, be expressed on the face of the contract, or at least be clearly implied from its language;"

20 H. L. E. 114.

In the case of *Lumley v. Wagner*, Wagner had agreed with Lumley to sing at his theatre during a certain period of time, and not to sing elsewhere without his written authority, it was held on a bill filed to restrain her from singing for a third party, and to grant an injunction for that purpose, that the positive and negative stipulations of the agreement formed but one contract, and the court would interfere to prevent the violation of the negative stipulation, although it could not enforce the specific

performance of the entire contract. *Lumley v. Wagner* 1 De G. M. & G. 604; 21 L. J., Ch. 898.

The case of *Lumley v. Gye* is one of those cited and relied upon by the Supreme Court of the United States in deciding the case of *Angle v. Chicago, St. P. M. & O. R. Co.* (1894), 151 U. S. 1, 38 L. ed. 55, 14 S. C. 240.

In the *Angle* case, above referred to, the Supreme Court of the United States decided as follows:

"If one maliciously interferes in a contract between two parties, and induces one of them to break that contract to the injury of the other, the party injured can maintain an action against the wrongdoer."

Id., 38 L. ed. 55, Syl. 2.

Mr. Justice Brewer, in delivering the opinion of the Court in that case, said:

"It has been repeatedly held that, if one maliciously interferes in a contract between two parties, and induces one of them to break that contract to the injury of the other, the party injured can maintain an action against the wrongdoer. *Green v. Button*, 2 Crompt. M. & R. 707, in which the defendant, by falsely pretending to one party to a contract that he had a lien upon certain property, prevented such party from delivering it to the plaintiff, the other party to the contract, and was held responsible for the loss occasioned thereby. *Lumley v. Gye*, 2 El. & Bl. 216, in which a singer had entered into a contract to sing only at the theatre of the plaintiff, and the defendant maliciously induced her to break that contract, and was held liable to the damages sustained by the plaintiff in consequence thereof. *Bowen v. Hall*, L. R. 6 Q. B. Div. 333, in which it was held that an action lies against a third person who maliciously induces another to break his contract of exclusive personal service with an employer, which thereby would naturally cause, and did in fact cause, an injury to such employer. In the opinion of Brett, L. J.,

it was said 'that wherever a man does an act which in law and in fact is a wrongful act, and such an act as may, as a natural and probable consequence of it, produce injury to another, and which in the particular case does produce such an injury, an action on the case will lie. This is the proposition to be deduced from the case of *Ashby v. White*, 1 Ld. Raym. 938. If these conditions are satisfied, the action does not the less lie because the natural and probable consequence of the act complained of is an act done by a third person; or because such act so done by the third person is a breach of duty or contract by him, or an act illegal on his part, or an act otherwise imposing an actionable liability on him.' *Walker v. Cronin*, 107 Mass. 555, in which a manufacturer was held entitled to maintain an action against a third party who, with the unlawful purpose of preventing him from carrying on his business, wilfully induced many of his employes to leave his employment, whereby the manufacturer lost their services, and the profits and advantages which he would have derived therefrom. *Benton v. Pratt*, 2 Wend. 385, 20 Am. Dec. 623. *Rice v. Manley*, 66 N. Y. 82, 23 Am. Rep. 30, in which a party had contracted to sell and deliver to plaintiffs a quantity of cheese, but having been made to believe through the fraud of the defendant that the plaintiffs did not want the cheese, sold and delivered it to him, and it was held that an action could be maintained against the defendant for the damages which the plaintiffs sustained from failing to get the cheese. *Jones v. Stanly*, 76 N. C. 355, in which the court said: 'It was decided in *Haskins v. Royster*, 70 N. C. 601, 16 Am. Rep. 780, that if a person maliciously entices laborers or croppers to break their contracts with their employer and desert his service, the employer may recover damages against such person. The same reasons cover every case where one person maliciously persuades another to break any contract with a third person. It is not confined to contracts for service.' "

Id., 38 L. ed. 62, 63.

The doctrine laid down in the Angle case in 1894 was reaffirmed in 1907 in the Bitterman case.

In the Bitterman case, Mr. Justice White, delivering the opinion of the court, said that in the Angle case it was held by the Supreme Court that an actionable wrong is committed by one who maliciously interferes in a contract between two parties and induces one of them to break that contract to the injury of the other.

And Mr. Justice White added:

"We deem it unnecessary to restate the grounds upon which the ruling in the Angle case was rested, or to trace the evolution of the principle in that case announced, because of the consideration given to the subject in the Angle case and the full reference to the authorities which was made in the opinion in that case."

Bitterman v. Louisville & N. R. Co. (1907) 207 U. S. 205, **222, 223**, 52 L. ed. 171, loc. cit. 182.

Paraphrasing the holding in the case of *Lumley v. Wagner*, *supra*, it is correct to say that the contract between the Eagle Company and its employees is entire; that there is a positive stipulation on the part of the Eagle Company that while the employee remains in the Company's employ the Company will run its glass factory non-union, and there is a negative covenant on the part of the employee that such employee will not join the American Flint Glass Workers' Union while he remains in the Company's employ.

Following *Lumley v. Wagner* the Court could not compel the Company to run non-union, although it could restrain it from running union, at the instance of the objecting non-union employee; and likewise could not compel the employee to work as a non-union man, although it could restrain him from working as a union man while in the Company's employ.

It is not to the point to say that the law does not notice little things and that the Company could discharge its employee if the employee broke his contract and it did not want him to remain in its employ after he had joined the union; neither is it to the point to say that the employee if non-union could quit his job if he was not satisfied to continue working for the company if it broke its contract with him and ran union.

In the Bitterman case the breaching of so small a thing as the conditions of a railroad excursion ticket was the minimum issue, although the continuation of such breachings constituted the practical damage and the real cause of suit.

So in the Eagle case the breaching of the contractual relations with one employee is the minimum issue, but the continuation of such breachings with other employees constitutes the practical damage, and is the substantial wrong to prevent which the Eagle Company asked for and obtained the injunction from the District Court which it now asks to have upheld and perpetuated by this Court.

III.

THE DECISION OF THE CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT VIOLATES RIGHTS OF THE EAGLE COMPANY WHICH ARE SECURED TO IT BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

The Fourteenth Amendment of the Constitution of the United States contains this clause:

"Nor shall any state deprive any person of life, liberty, or property, without due process of law."

9 F. S. A. p. 416.

"A similar clause, as an inhibition on the national government, is contained in the Fifth Amendment."

Note 1, 9 F. S. A. 416.

This amendment applies to corporations as well as to natural persons and restrains the judicial as well as the legislative branches of the state government.

If the decision of the Circuit Court of Appeals for the Fourth Circuit correctly states and applies the law of West Virginia, then the rights of the Eagle Company under the Fourteenth Amendment to the Constitution of the United States have been violated by that decision. Conversely, if the law of West Virginia has not been correctly stated and applied by the Circuit Court of Appeals, then the rights of the Eagle Company under the Fifth Amendment to the Constitution have been violated by that decision.

IV.

FUNDAMENTAL RIGHT TO FREEDOM OF CONTRACT.

Aside from the provisions of the Fifth Amendment and aside from the provisions of the Fourteenth Amendment to the Constitution of the United States, there is under the Federal Constitution, as well as under the Constitution of the State of West Virginia, a constitutional right to freedom of contract derived from either of two sources, namely, the right of freedom to labor or the right to acquire property; neither right being of value unless one can make contracts concerning it.

Stimson's Federal and State Constitutions of the United States, chap. III, Book I, pp. 18 to 35, both inclusive.

PUBLIC POLICY.

The decision of the Circuit Court of Appeals, so far as the Eagle Company's rights relating to freedom of contract are concerned, does not follow but violates all precedents, except the precedent that Court made for itself in the Hitchman case, and which is now in this very Court on review for error.

And aside from its own decision in that case the Court cites no authority in the form of any adjudged case, because there is no case.

In denying to the Eagle Company the enjoyment of its inherent and constitutional rights with respect to freedom of contract, the Circuit Court of Appeals has relied upon what it assumes and states to be public policy.

In deciding the case, that Court says:

"This is an age of co-operation through organization. In fact organization is the only means by which united effort can be secured in any branch of human endeavor. The doctors, dentists, school teachers, wholesale and retail merchants, bankers and manufacturers, and in fact every branch of industry in this country, are organized for the purpose of the mutual protection of the respective parties interested. Such being the case, it is just as essential, and perhaps more important, that the laboring people should organize for their advancement and protection, than it is for any of the vocations we have mentioned.

"While labor and capital are vitally interested in the proper solution of these questions, it should be remembered that the public is likewise interested, and in some instances affected to a greater extent than either labor or capital on account of the disputes and law suits growing out of these matters. Therefore, it may be properly said that these questions have a bearing upon the welfare of a large per-

centage of our people. * * * Therefore, we deem it our duty to define the rights of the parties to this controversy, in so far as we may under the facts of this case, so as to set at rest as many as possible of the vexatious questions that are a source of irritation, as well as productive of much litigation.

"In the first place, it should be understood once and for all that so long as capital employs legitimate means for the protection of property rights, that it is to be accorded the protection of the law, but this does not mean that capital may, by improper methods, form combinations for the purpose of preventing labor from organizing for mutual protection. Likewise, it should be definitely understood that the laboring men have the right to use peaceable and lawful methods to unite their forces in order to improve their condition as respects their ability to earn a decent living; give their children moral and intellectual training; and secure the enactment of legislation. * * * It should be understood that when a controversy arises between labor and capital that the use of dynamite or any other unlawful methods on the part of the representatives of labor, whereby property and human lives are destroyed, is not to be tolerated by the courts.

"The relative rights of the parties are entitled to equal consideration, and we feel sure that when such controversies arise that they will be dealt with in the same spirit that actuates the courts in adjusting the differences between individuals, wherein questions are involved affecting the ordinary transactions of life.

"Until it is provided by state and national legislation that labor disputes shall be settled by arbitration, it will be the duty of the courts to determine questions of this character, when a proper case is presented. Under the law as it now exists, when property or personal rights are involved, the courts alone can furnish adequate relief. However, while this is true, we think that care and caution should be

exercised in the issuance of injunctions of this character.

"We are inclined to the belief that in some instances a reasonable delay in the issuance of the writ would have a tendency to bring about a settlement between the parties by which the rights of both could be amply protected, and thus avoid the expense incident to litigation, to say nothing about the injury sustained by the employer as well as the employe, occasioned by the suspension of operations.

"In no instance should a union be restrained from using lawful and peaceable methods for the purpose of maintaining its organization, but while this is true, the court should restrain those who by violence, coercion, and intimidation seek to deprive the * * * owner of the right to use his property as he may see fit."

This Court has this to say on public policy:

"This Court can know nothing of public policy except from the constitution and the laws, and the course of administration and decision. It has no legislative powers. It cannot amend or modify any legislative acts. It cannot examine questions as expedient or inexpedient, as politic or impolitic; considerations of that sort must, in general, be addressed to the legislature. Questions of policy determined there are concluded here."

License Tax Cases, 1867, 5 Wall. 462, **469**. 18 Law. ed. 497, **500**.

And in the case of the Baltimore & Ohio Southwestern Railway Company v. Voight (1900), 176 U. S. 498, **505**; 44 L. ed. 560, **565**; 20 S. C. 385, Mr. Justice Shiras, in delivering the opinion of the Supreme Court, said:

"It must not be forgotten that the right of private contract is no small part of the liberty of the citizen, and that the usual and most important function of courts of justice is rather to maintain and enforce contracts than to enable parties thereto to escape

from their obligation on the pretext of public policy unless it clearly appear that they contravene public right or the public welfare. It was well said by Sir George Jessel, M. R., in *Printing & N. Registering Co. v. Sampson*, L. R. 19 Eq. 465: 'It must not be forgotten that you are not to extend arbitrarily those rules which say that a given contract is void as being against public policy, because if there is one thing which more than another public policy requires, it is that men of full age and competent understanding shall have the utmost liberty of contracting and that their contracts, when entered into freely and voluntarily, shall be held sacred, and shall be enforced by courts of justice. Therefore, you have this paramount public policy to consider—that you are not lightly to interfere with this freedom of contract.' "

To uphold the contract as lawful and to enjoin the defendants who are outsiders from inducing by peaceable means breaches thereof by one of the parties thereto will not contravene public right or the public welfare.

The Eagle Company is contending for its right to enjoy what is shown by the Federal Constitution and its amendments and by the Constitution of the State of West Virginia to be a public right.

And the fact that there is no legislative enactment, and no decided case which supports the last quoted portion of the opinion of the Circuit Court of Appeals, shows that the doctrine announced by the Circuit Court of Appeals in that opinion is not one which is called for by the public welfare.

In denying to the Eagle Company the enforcement of the Company's inherent and Federal and State constitutional rights to freedom of contract, the Circuit Court of Appeals misapplied the law applicable to and overlooked the facts of the Eagle Company's case.

The Circuit Court of Appeals says:

"This is an age of co-operation through organization. In fact organization is the only means by which united effort can be secured in any branch of human endeavor. The doctors, dentists, school teachers, wholesale and retail merchants, bankers and manufacturers, and in fact every branch of industry in this country, are organized for the purpose of the mutual protection of the respective parties interested. Such being the case, it is just as essential, and perhaps more important, that the laboring people should organize for their advancement and protection, than it is for any of the vocations we have mentioned." Hitchman Record pp. 893, 894.

"In the first place, it should be understood once and for all that so long as capital employs legitimate means for the protection of property rights, that it is to be accorded the protection of the law, but this does not mean that capital may, by improper methods, form combinations for the purpose of preventing labor from organizing for mutual protection." Hitchman Record p. 894.

There is no suggestion in the record anywhere that the Eagle Company has employed, or that it contemplates employing, any illegitimate means for the protection of its property rights. Neither is there in the record any suggestion that by improper methods it has entered into, or contemplates entering into, any combination for the purpose of preventing labor from organizing for mutual protection.

The Eagle Company has merely employed an entirely legitimate and a highly necessary means for the protection of its property rights by contracting with each of its employees—that while the Eagle Company furnishes such employee work, such employee will not become a member of the American Flint Glass Workers' Union.

In the case of *Adair v. United States* (1907), 208 U. S. 161, 173, Mr. Justice Harlan, delivering the opinion of the Court, quoted approvingly, as follows:

“‘It is a part of every man's civil rights that he be left at liberty to refuse business relations with any person whomsoever, whether the refusal rests upon reason, or is the result of whim, caprice, prejudice, or malice. With his reasons neither the public nor third persons have any legal concern. It is also his right to have business relations with anyone with whom he can make contracts, and, if he is wrongfully deprived of this right by others, he is entitled to redress.’”

With the reasons of the Eagle Company for contracting that its employees shall not be members of the American Flint Glass Workers' Union, and that if they desire to become members of that organization they shall first withdraw from the employment of the Eagle Company, neither the public nor third persons have any legal concern.

The Circuit Court of Appeals further says:

“In no instance should a union be restrained from using lawful and peaceful methods for the purpose of maintaining its organization.” *Hitchman* (see p. 30) Record p. 895.

The issue in this case is not whether the American Flint Glass Workers' Union may use lawful and peaceable methods for the purpose of maintaining its organization, because it may solicit membership from men who are not employees of the Eagle Company and from men who have not agreed that they will not join the American Flint Glass Workers' Union while they are employed by their then employer.

If the American Flint Glass Workers' Union is to be held to be entitled to induce breaches of contracts between the Eagle Company and that Company's employees because that organization has elected to try to batter

down the barriers which that Company has by its contracts with its employees created to protect itself from being compelled to do business with the American Flint Glass Workers' Union, then such breaching of the contracts can only be done through legislative enactment. IT CANNOT BE DONE BY JUDICIAL DECREE AS PUBLIC POLICY. And the Eagle Company claims that such a thing cannot lawfully be done even by the Congress of the United States or by the Legislature of the State of West Virginia.

Speaking to the point of legislative power, Mr. Justice Harlan in *Adair v. United States*, 208 U. S. 179, 52 L. ed. 444 and 52 L. ed. 445, says:

"If such a power exists in Congress it is difficult to perceive why it might not, by absolute regulation, require interstate carriers, under penalties, to employ, in the conduct of its interstate business, only members of labor organizations, or only those who are not members of such organizations—a power which could not be recognized as existing under the Constitution of the United States."

"Every man has a right to pursue his trade or calling without molestation or obstruction, and anyone who by any act, though it be not otherwise unlawful, molests or obstructs him is guilty of a wrong, unless he can show lawful justification or excuse for so doing."

The foregoing is the doctrine broadly laid down in the ancient case of *Keeble v. Hickeringill*, 11 East, 574 n.

"If one wantonly and maliciously, whether for his own benefit or not, induce a person to violate his contract with a third person to the injury of that third person, it is actionable."

West Virginia Transportation Company v. Standard Oil Company (1900), 50 W. Va. 611; 40 S. E. 491; 56 L. R. A. 804; 88 Am. St. Rep. 895.

"Rights of commerce give no authority to their possessor to invade the ferry franchise of another without authority from the holder."

Conway v. Taylor (1862), 1 Black 603; 17 L. Ed. 191.

NEITHER DO THE RIGHTS OF A LABOR UNION
in

"using lawful and peaceful methods for the purpose of maintaining its organization"

EXTEND TO INVADING THE RIGHTS OF A NON-
UNION EMPLOYER OF NON-UNION LABOR.

VI.

LABOR UNIONS ARE NOT EXEMPT FOR THE
REASON THAT THEY ARE LABOR UNIONS FROM
THE APPLICATION OF THE LAW AGAINST
TORTIOUS INTERFERENCE WITH THE CON-
TRACTUAL RELATIONS OF OTHERS.

"No one can legally excuse himself to a man, of whose contract he has procured the breach, on the ground that he acted on a wrong understanding of his own rights, or without malice, or bona fide, or in the best interests of himself, nor even that he acted as an altruist, seeking only the good of another and careless of his own advantage."

Read v. Friendly Society of Operative Stone Masons of England, Ireland and Wales (1902), 2 K. B. 88.

"If one wantonly and maliciously, whether for his own benefit or not, induces a person to violate his contract with a third person, to the injury of that third person, it is actionable."

Thacker Coal & Coke Co. v. Burke (1906), 5 L. R. A. 1091, Syl. 2.

The case of Flaccus v. Smith et al. (1901), 199 Pennsylvania, 128, is analogous to the Eagle case, and concerns the same labor union.

Flaccus was the proprietor of glass works at Tarentum, Pennsylvania. He ran his works non-union, and his employees consisted of men and apprentices, all of whom had agreed with their employer not to connect themselves with the Union, which in that case was otherwise known as the American Flint Glass Workers' Union, affiliated with the American Federation of Labor.

The defendants in the case, W. J. Smith and others, were members of the American Flint Glass Workers' Union, and they tried to unionize the plaintiff's glass works at Tarentum by persuading the plaintiff's employees to join their Union. Flaccus, the plaintiff, brought his suit in the Court of Common Pleas, No. 2, for Allegheny County, to enjoin the defendants from interfering with his apprentices, and upon the Court, upon final hearing, enjoining the defendants from doing the acts complained of and from persuading the apprentices to join the Union, the defendants appealed.

In the report of the case, as decided by the Supreme Court of Pennsylvania, Judge Brown delivering the opinion of the Court, said (54 L. R. A. 642):

"The court below found that Skelley, one of the appellants, had gatherings of the apprentices of the appellee at his room in a hotel and persuaded them to join the union referred to; that he knew the character of the appellee's works as an independent factory, in which members of the union were not employed and that his apprentices were bound in their indentures not to join or become subject to the rules or regulations of any such organization as he represented; that he knew these facts at the time he swore in these apprentices as members of the union; that the apprentices who joined the union violated the covenant of their

indenture and subjected themselves to the orders of the union, which made obedience to it paramount to obedience to their employer; that the object of Skelley was to break down the appellee's factory as a non-union factory, either by preventing the operation of his works or compelling him to join the union; that the apprentices who joined the union, enticed and persuaded so to do by Skelley, violated an express covenant of their indenture, which was one of great importance to the appellee, and Skelley so knew at the time he so enticed them; that Skelley's conduct and actions were very injurious to the appellee and his business, and, if repeated and persisted in, would in all probability utterly ruin his business; that Skelley's co-defendants, by their counsel, openly and boldly justified him in all he did, contending that as an officer or agent of the union, he had a perfect right to interfere with plaintiff's apprentices, persuade them to join the union, and secretly swear them in as members; that, if the union had that right, either Skelley or some other agent could go to Tarentum at any time and interfere with the appellee's apprentices and business until it would be destroyed."

In deciding the case Judge Brown said:

"This is not a controversy between the employer and his employees, but between him and certain individuals associated as a labor union, unfriendly to the employment of independent labor, and seeking to induce the apprentices of the employer to violate the terms of their indentures with him. No question is here raised by the employer as to what his employees may or may not do, and the complaint sets forth no misconduct by them for which relief is asked. The appellants, outsiders, having no connection with the business of the appellee, are charged with enticing and endeavoring to entice the young men employed by him to violate the covenants of their apprenticeships with him, and protection is prayed for against the threatened ruin of his business, as found by the court below. Having reviewed all the evidence, we

are not persuaded that any of the court's findings of fact ought to be disturbed, and, with them before us, the only question to be determined is whether the injunction should go out."

And on the same page (54 L. R. A. 642) in affirming the action of the lower court, Judge Brown for the Supreme Court of Pennsylvania, said:

"The appellee had an unquestioned right, in the conduct of his business, to employ workmen who were independent of any labor union, and he had the further right to adopt a system of apprenticeship which excluded his apprentices from membership in such a union. He was responsible to no one for his reasons in adopting such a system, and no one had a right to interfere with it to his prejudice or injury. Such an interference with it was an interference with his business, and, if unlawful, cannot be permitted. The Court found that the interference was injurious to him, and, if allowed to continue, would utterly ruin his business. The damages resulting from such an injury are incapable of ascertainment at law, and justice demands that specific relief be furnished in a court of equity. The test of equity jurisdiction is the absence of a plain and adequate remedy at law to the injured party, depending upon the character of the case as disclosed in the pleadings. If equity alone can furnish relief, the injunction must be issued."

The Circuit Court of Appeals for the Fifth Circuit in deciding the case of *Louisville & Nashville Railroad Company v. Bitterman et al.* (1906), 75 C. C. A. 192, 144 Fed. 34, quoted and relied upon *Angle v. Chicago, St. P. M. & O. R. Co.*, and cited approvingly *Flaccus v. Smith*, and the decision of the Circuit Court of Appeals for the Fifth Circuit above referred to was affirmed by the Supreme Court of the United States in 207 U. S. 205.

Of this same case of *Flaccus v. Smith*, the Circuit Court of Appeals for the Second Circuit, in deciding the case of *American Malting Company v. Keitel* (1913), 209 Fed. 351, 359, said:

"In Flaccus v. Smith, 199 Pa. 128, 48 Atl. 894, 54 L. R. A. 640, 85 Am. St. Rep. 779, an injunction issued to a third person, an officer of a labor union, restraining him from enticing the plaintiff's apprentices to break their contract of employment; they having agreed at the time of their employment not to become members of a union while working for the plaintiff. The court below had found as a fact that, if the interference was allowed to continue, it would ruin the plaintiff's business."

The Supreme Court of the United States has said:

"Society itself is an organization, and does not object to organizations for social, religious, business, and all legal purposes. The law, therefore, recognizes the right of workingmen to unite and to invite others to join their ranks, thereby making available the strength, influence, and power that come from such association. By virtue of this right, powerful labor unions have been organized."

"But the very fact that it is lawful to form these bodies, with multitudes of members, means that they have thereby acquired a vast power in the presence of which the individual may be helpless. This power, when unlawfully used against one, cannot be met, except by his purchasing peace at the cost of submitting to terms which involve the sacrifice of rights protected by the Constitution; or by standing on such rights, and appealing to the preventive powers of a court of equity. When such appeal is made, it is the duty of government to protect the one against the many, as well as the many against the one."

Gompers v. Buck's Stove & R. Co. (1911), 55 L. ed. 797, 805; 221 U. S. 418, 439.

If the decision of the Circuit Court of Appeals for the Fourth Circuit is law then it is correct to say that capital and labor, as respective classes, are so in conflict that each has a lawful interest in injuring the other.

In discussing this proposition the Circuit Court of Appeals for the Sixth Circuit says:

"So far as the record in this case shows, there was no complaint by any of the company's employes regarding wages or the conditions of service, nor does it appear that the demanded wage scale was higher than the wages being paid. It is the fair inference from the record that the contest was wholly over 'recognition.' A concerted effort by strikers to cripple an employer's business, by persuading his workmen away from him, is an injury which requires justification, but it is permitted because it is incidental to the full exercise of the employees' clear and established right to strike for the improvement of their own condition. Such unlawfulness as there might otherwise be in that campaign of persuasion is merged in the dominant right to promote directly their own interest by effectually carrying on their contest. It may well be that the limits of lawful persuasion, when exercised by employes in the course of a strike by them to force from their employer better terms or conditions for themselves and as a means collateral to their side of the conflict, are wider than are such limits in a case where there is no complaint by employees, but where the strike is directed by officials of a labor organization for the primary purpose of compelling its recognition. In the one case, the benefit to the striking employees through winning their contest is immediate and direct; indeed, its primary purpose is to improve the specific, existing conditions, and the injury to the employer's business is measurably incidental. In the other case, injury to the employer's business is the primary object, sought for the purpose of compelling a result said to be for the benefit of the working miners of several states grouped as a class, and for the benefit of these employes of this

employer only in a remote or contingent or uncertain way. To say that every weapon lawful in a conflict between an employer and his workmen, over a question in which each has a direct personal interest, is also lawful as between him and a labor organization to which his men do not belong, is to say that capital and labor, as respective classes, are so in conflict that each has a lawful interest in injuring the other. This we are not prepared to do."

Tunstall v. Stearns Coal Co. (December 5, 1911).
192 Fed. Rep. 808, **810, 811.**

VII.

IMMUNITY OF EMPLOYEE NOT A NON CONDUCTOR.

If the Eagle Company suffers loss through its employees quitting its service, and has no right of action against them for the damage done for the reason that they have the right to quit if they want to do so, such fact does not carry with it immunity to the defendants, who, in inducing the employees either to quit working for plaintiff, or to join the union while in the plaintiff's employ, *disqualifying them for further employment by plaintiff*, have controlled the actions of such employees to plaintiff's harm. The immunity of the employee is not a non conductor behind which these defendants may take refuge.

Moran v. Dunphy, 177 Mass., 485 (*supra*).

The court in that case spoke through Mr. Chief Justice Holmes.

VIII.

PETITIONER'S CONTRACT IS NOT IN RESTRAINT OF TRADE.

Special reference is here made to the case of Associated Hat Mfrs. v. Baird-Unteidt Company, decided by the

Supreme Court of Errors of Connecticut, July 13, 1914 (The Atlantic Reporter, Vol. 91, No. 3, pp. 373-380), in which the court said:

"The United Hatters of North America is an unincorporated association of journeymen hatters, having over 9,000 members, and owning a union label, which it permits to be placed in hats manufactured in factories employing its members solely, and commonly called 'union or closed shops.' * * * On January 12, 1909, the board of directors of the plaintiff passed a resolution that it recommended to the association:

"That the use of the union label to be discontinued in every factory of every member of this association one hour subsequent to the passage of this resolution unless during the said period of one hour the association receives official notice that the label will be restored to and the men immediately placed to work in the factory of the Guyer Company, located in Philadelphia, Pa., under the conditions existing at the time of the withdrawal of the label and men."

"* * * On January 15, 1909, the association communicated to all of its members the substance of this resolution, and the defendant and the other members of the plaintiff informed their employees that the union label would no longer be permitted to be used in their factories. Whereupon the employes who were members of the United Hatters, pursuant to its order, quit work, and all of the factories, including the defendants, on January 16, 1909, ceased to manufacture hats, which condition continued until January 29, 1909. The members of the plaintiff knew that a large proportion of the members desired to resume the operation of factories as open shops, and on January 28, 1909, the board of directors of the plaintiff passed the following resolution:

"That the board of directors recommend to the association that each member offer situations to

operatives as individuals, in their respective factories on February 9, 1909.'

"* * * All of the members of the plaintiff, including the defendant, understood the resolution of January 28, 1909, to mean the hiring of their employes as individuals in an open shop.* * * A vote that each member offer situations to operatives as individuals is a declaration for the open shop. Its purpose was to preserve to employers the right to contract for their labor regardless of its membership in the union. The right to so contract is one of the unalienable rights of every employer of labor. Every employer and employee has, under the law, such freedom of contract. The law will not take it from him, much less declare illegal his effort to establish his right to it. * * * The open shop resolution meant that the employers should be free to hire when they pleased and at such wage as the market for labor fixed, and that the employee should be free to choose his employer and to make his own conditions of employment. The agreement took from each the right to freedom of contract.'

At an earlier stage of the opinion the court had said:

"It is too late to question the right of a labor union to make by-laws providing for strikes and to issue its order for a strike in an effort to secure lawful objects by lawful means. *Reynolds et al. v. Davis et al.*, 198 Mass. 294, 84 N. E. 457, 17 L. R. A. (N. S.) 162. And it may prosecute the strike by any means neither illegal nor in violation of the equal or superior rights of others.

"(1) So, too, the association of employers may enact a by-law giving it the right to order a shut down of the factories of its members, provided the objects sought be within its lawful purposes and the means used be lawful. And the employer has the right freely to hire his labor in the market without denial or unfair restriction of this right. The order of the association to stop work may curtail this right, but it is not, for this reason, illegal."

It was also claimed by the defendant that the plaintiff association is, by reason of its organization and its by-laws, illegal. "The foundation of this claim is threefold, because: (1) the real purpose and object of the association was to permit it to order a suspension of work by its members; (2) to make agreements relative to the use of the union label; and (3) *because the members of the plaintiff were engaged in interstate commerce, the association was a violation of the Sherman Act (Act July 2, 1890, C. 647, 26 Stat. 209 [U. S. Comp. S. 1901, p. 3200]), as its purposes were in restraint of trade.*" In answer to such contentions the court said:

"We do not think it necessary to discuss the proposition that a vote by employers to conduct their factories as open shops and to exercise their right to hire their labor as individuals, and not as members of a labor union, is a restraint of trade within the Sherman Act. Nor do we think the proposition tenable that the object of the association was the making of the arbitration agreement which the plaintiff had with the United Hatters, and that it was void because it involved the exclusive employment by the members of the plaintiff of union labor. The arbitration agreement does not bear this construction, and its making was a mere incident of the business of the plaintiff. Moreover, it did not relate to, or enter into, the vote for the open shop.
* * * The open shop resolution meant that the employers should be free to hire where they pleased and at such wage as the market for labor fixed, and that the employee should be free to choose his employer and to make his own conditions of employment. The agreement took from each the right to freedom of contract. These employers knew what they were engaged upon, for, simultaneously with this agreement, they agreed with each other to indemnify against any liability which might arise to the plaintiff. Had they in good faith intended to run an open shop

would they have felt it essential to make provision for the contingency of their agreement being held to be a violation of their obligation to the plaintiff? In fact, the agreement was to hire exclusively union labor. The contracting employers included all the manufacturers, with two exceptions, in the chief industry of the Danbury district.

"We held in *Connors v. Connolly et al.*, 86 Conn. 641, such an agreement against public policy and void. Meritorious as the effort of these mediators to settle a strike of fatal consequences to large communities was, *we can not let our sympathy for the peacemaker cause us to forget that the security of society depends in great measure upon the preservation, inviolable, of the obligations of men.*"

In *Styles v. Lyon*, 87 Conn. p. 23, the court held:

"A contract in partial restraint of trade will not as a rule, be held to be against public policy, unless it unduly interferes with the interests of the public.

"The true test of reasonableness is whether the restrictive provision is necessary to protect the legitimate interests of the employer as affected by the contract of employment."

"An agreement in restraint of trade must satisfy the following conditions:

- (1) It must be reasonable.
- (2) It must be founded on good consideration.
- (3) It must not be too vague."

27 Halsbury's Laws of England, p. 553.

"Trade and Trade Unions."

§1073. "Restraint of Trade by Agreement."

"In estimating the reasonableness of a restraint, the paramount consideration which has to be taken into account is whether it is reasonably necessary for the protection of the interest of the covenantee, unless, it seems, there can be established some specific ground of public

policy which must be taken to override the interest of the covenantee."

Ib. §1077.

"There cannot be a restraint of trade in gross—the restraint must be for the protection of a business in which the covenantee is interested."

Ib. §1078.

"There must be a valuable and legal consideration, even though the covenant be by deed. The consideration may be shown either on the face of the agreement or by extrinsic evidence, or may be reasonably inferred from the agreement."

Ib. §1095.

"A consideration is sufficient if it has some value and is not merely illusory. Mere employment at will is a sufficient consideration, so is the continuation of an existing employment at will."

Ib. §1097.

"When once it is established that there is a consideration of some value, the court will not inquire into its adequacy."

Ib. §1099.

"The ordinary rules of contract apply in all questions as to parties to an agreement in restraint of trade."

Ib. §1102.

"In construing a contract which is in restraint of trade, the ordinary rules applicable to contracts must be applied."

Ib. §1105.

"A valid covenant in restraint of trade will be enforced by injunction notwithstanding that it provides for the payment of a sum by way of liquidated damages."

Ib. §1117.

Reference should here be made to the recent English case of *Howard v. Danner*, decided in the Chancery Divi-

sion of the High Court, on June 4, 1901, by Byrne, J., and reported in *The Times Law Reports*, vol. XVII, p. 548. In that case, "The receiver and manager of a restaurant business, appointed by the court in certain chancery proceedings, required each of the waiters at the restaurant to sign an agreement that in consideration of the employer retaining the waiter's services at 4s. per week, the latter agreed not to enter into the services of a new restaurant, about to be opened in the vicinity, during the current year, and in case of a breach to pay £1 a day for every day he might remain in the service of the new restaurant, as liquidated damages. Held, that the receiver and manager had authority to enter into the agreement, and that it was a reasonable agreement necessary for the protection of the business." After stating the facts the Justice said: "The present agreement with the defendant was, in his opinion, a reasonable agreement and a proper one under the circumstances, for the due protection of the Café Royal business and the estate of the testator; for it was obvious that a general defection of waiters to a rival establishment distant only two doors away, might do a great deal of mischief to plaintiff's business, and the plaintiff was well advised in taking the steps he did to prevent anything of this kind being possible."

And here the fact should be emphasized that in the case just cited the complaint was against a competitor, while *the case at bar is against an intermeddler*. A Labor Union is not a competitor of the employer. The Supreme Court of New Jersey, in the case of *George Jonas Glass Company v. Glass Bottle Blowers' Association of the United States and Canada, et al.* (1907, N. J. Eq. 66 Atl. 953), said:

"A labor organization seeking to compel a manufacturer to unionize his plant is not such a competitor in the labor market as to justify it in enticing em-

ployes to leave the service of their master, or to induce persons seeking employment with him from so doing, when the enticer does not employ labor. The competition which the law upholds must be honest competition, and not a malicious attempt to injure another."

IX.

COPPAGE *v.* KANSAS.

The decision of the Supreme Court (January 25, 1915) in the case of T. B. Coppage, Plaintiff in Error, *v.* The State of Kansas in stating the constitutional rights of Coppage, cannot be distinguished in principle from the rights of the Eagle Glass and Manufacturing Company under its contract relations with its employees as they are set forth in the foregoing employment card.

The employment in the Coppage case was

"A general or indefinite hiring, such as is presumed to be terminable at the will of either party."

No coercion was involved.

The employer prescribed as a condition upon which the employee might secure certain employment or remain in such employment that the employee would not become or remain a member of any labor organization while so employed.

The employee was subject to no incapacity or disability, but, on the contrary, was free to exercise a voluntary choice.

And the holding was that the employee, having made such an agreement, was bound by it and could not join the Union while so employed.

The Court said:

"Having accepted employment on those terms, the man is still free to join the union when the period of

employment expires; or, if employed at will, then at any time upon simply quitting the employment. And if bound by his own agreement to refrain from joining during a stated period of employment he is in no different situation from that which is necessarily incident to term contracts in general. For constitutional freedom of contract does not mean that a party is to be as free after making a contract as before; *he is not free to break it without accountability. Freedom of contract, from the very nature of the thing, can be enjoyed only by being exercised; and each particular exercise of it involves making an engagement which, if fulfilled, prevents for the time any inconsistent course of conduct.*"

In the *Coppage* case, the Court said:

"In *Adair v. United States*, 208 U. S. 161, this Court had to deal with a question not distinguishable in principle from the one now presented."

"To ask a man to agree, in advance, to refrain from affiliation with the union while retaining a certain position of employment, is not to ask him to give up any part of his constitutional freedom."

"Can the right of making contracts be enjoyed at all, except by parties coming together in an agreement that requires each party to forego, during the time and for the purpose covered by the agreement, any inconsistent exercise of his constitutional rights?"

These queries answer themselves. The answers, as we think, lead to a single conclusion: Under constitutional freedom of contract, whatever either party has the right to treat as sufficient ground for terminating the employment where there is no stipulation on the subject, *he has the right to provide against by insisting that a stipulation respecting it shall be a sine qua non of the inception of the employment, or of its continuance if it be terminable at will.*"

In *Coppage v. Kansas*, the Supreme Court had to do with the effort of the State of Kansas through its Legislature, sustained by the decision of the Supreme Court of

Kansas, to take from the employer his constitutional right to contract with his employee upon such terms as the employer and employee might agree upon.

IN THE CASE AT BAR THE LABOR UNION HAS BEEN HELD BY THE CIRCUIT COURT OF APPEALS TO HAVE THE RIGHT TO DO THAT WHICH THE SUPREME COURT DENIED TO THE LEGISLATURE OF THE STATE OF KANSAS AND TO THE SUPREME COURT OF THAT STATE.

In *Coppage v. Kansas*, the Court said:

"The Fourteenth Amendment debars the States from striking down personal liberty or property rights, or materially restricting their normal exercise, excepting so far as may be incidentally necessary for the accomplishment of some other and paramount object, and one that concerns the public welfare. *The mere restriction of liberty or of property rights can not of itself be denominated 'public welfare,' and treated as a legitimate object of the police power; for such restriction is the very thing that is inhibited by the Amendment.*"

If the State cannot under the guise of "public welfare" restrict the liberty or property rights of the employer in the manner sought to be done by the State of Kansas by the Act under review by the Supreme Court, much less can the labor union in this case with no other or higher motive than "it wants to."

X.

RIGHT OF PETITIONER TO INJUNCTIVE RELIEF.

In the *Flaccus* case, heretofore cited, the court stated the precise issue before it in these terms: "This is not a controversy between the employer and his employees,

but between him and certain individuals associated as a labor union, unfriendly to the employment of independent labor, and seeking to induce the apprentices of the employer to violate the terms of their indentures with him. No question is here raised by the employer as to what his employees may or may not do, and the complainant sets forth no misconduct by them for which relief is asked." In speaking of such "relief" the court said: "that the interference was injurious to him [the employer], and, if allowed to continue, would utterly ruin his business. The damages resulting from such an injury are incapable of ascertainment at law, and justice demands that specific relief be furnished in a court of equity." So in this case the controversy is not "between the employer and his employees, but between him and certain individuals associated as a labor union, unfriendly to the employment of independent labor," who are seeking to induce the employees of petitioner to violate the terms of their contract with petitioner. As the damages resulting from such an injury is this case, as in the Flaccus case, "are incapable of ascertainment at law, * * * justice demands that specific relief be furnished in a court of equity." And so in the Bitterman case, heretofore quoted, this court said: "Concluding, as we do, that the commission of a legal wrong by the defendants was disclosed by the case as made, we are brought to consider the several contentions concerning the jurisdiction of the court and its right to afford relief. * * * Besides, the substantial character of the jurisdictional averment in the bill is to be tested, not by the more immediate pecuniary damage resulting from the acts complained of, but by the value of the business to be protected and the rights of property, which the complainant sought to have recognized and enforced. * * * The contention that, though it be

admitted, for the sake of argument, that the acts charged against the defendant 'were wrongful, tortious, or even fraudulent,' there was no right to resort to equity because there was a complete and adequate remedy at law to redress the threatened wrong when committed, is, we think, also devoid of merit. * * * The circuit court of appeals decided that error had been committed in refusing to grant an injunction against dealing in non-transferable tickets to be issued in the future, and directed that the decree below be enlarged in that particular. It is insisted that the circuit court of appeals erred in awarding an injunction as to dealings 'in non-transferable tickets that may be hereafter issued * * * since it thereby undertook to promulgate' a rule applicable to conditions and circumstances which have not yet arisen, and to prohibit 'the petitioners from dealing in tickets not *in esse* * * * and is, therefore, violative of the most fundamental principles of our government.' But when the broad nature of this proposition is considered, it but denies that there is power in a court of equity in any case to afford effective relief by injunction. Certain it is that every injunction, in the nature of things, contemplates the enforcement, as against the party enjoined, of a rule of conduct for the future as to the wrong to which the injunction relates. Take the case of trespasses upon land where the elements entitling to equitable relief exist. See *Slater v. Gunn*, 170 Mass. 509, and cases cited. It may not be doubted that the authority of a court would extend, not only to restraining a particular imminent trespass, but also to prohibiting like acts for all future time. The power exerted by the court below which is complained of, was in no wise different. * * * The action of the circuit court of appeals, therefore, in causing the injunction to apply not only to the illegal dealings

as to the then outstanding tickets, but to like dealings as to similar tickets which might be issued in the future, was but the exertion by the court of its power to restrain the continued commission against the rights of complainant in the future of a definite character of acts adjudged to be wrongful." An inspection of the record will show that the injunction issued in the case at bar conforms, in every particular, with the foregoing rule as this court has defined it.

All of which is respectfully submitted.

GEORGE R. E. GILCHRIST,
Counsel for Petitioner.

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FOURTH CIRCUIT.

WILLIAM J. HILL, *et al.*,
Appellants,

v.

EAGLE GLASS AND MANUFACTURING
COMPANY,
Appellee.

} In Equity.
No. 1289.

The said William J. Hill, *et al.*, appellants, now respondents, are hereby notified that the Appellee, now petitioner for a writ of certiorari, will on _____ the _____ day of _____, 1915, upon its verified petition and a copy of the entire record in this cause, at the opening of the court on that day, or as soon thereafter as counsel can be heard, submit a motion (a copy of which and of the petition for a writ of certiorari, as above set forth, are herewith delivered to you) to the Supreme Court of the United States, at its Court Room at the Capitol, in the City of Washington, D. C.

GEORGE R. E. GILCHRIST,
Counsel for Petitioner.

Service of the foregoing notice and delivery of a copy of the said motion and petition for writ of certiorari on the _____ day of _____, 1915, is hereby acknowledged.

Counsel for Respondents.

Office Supreme Court, U. S.

FILED

DEC 5 1916

JAMES D. MAHER

CLERK

Supreme Court of the United States

OCTOBER TERM, 1916.

No. [REDACTED] 23

EAGLE GLASS AND MANUFACTURING COMPANY,
Appellant and Petitioner,

v.

THOMAS W. ROWE, individually, and as President of
American Flint Glass Workers' Union, *et al.*,
Appellees and Respondents.

Appeal from the United States Circuit Court of
Appeals for the Fourth Circuit, and

Upon a Petition for a Writ of Certiorari to the said
Court.

(Petitioner is also referred to as Plaintiff.)

Additional Brief of George R. E. Gilchrist and
Hannis Taylor for Appellant and Petitioner.



Supreme Court of the United States

OCTOBER TERM, 1916.

No. 109.

EAGLE GLASS AND MANUFACTURING COMPANY,
Appellant and Petitioner,

v.

THOMAS W. ROWE, individually, and as President of
American Flint Glass Workers' Union, *et al.*,
Appellees and Respondents.

*Appeal from the United States Circuit Court of Appeals for
the Fourth Circuit, and*

Upon a Petition for a Writ of Certiorari to the said Court.

(Petitioner is also referred to as Plaintiff.)

ADDITIONAL BRIEF OF GEORGE R. E. GIL- CHRIST AND HANNIS TAYLOR FOR APPEL- LANT AND PETITIONER.

The decision of the Circuit Court of Appeals is reported
in 135 C. C. A. 417 and 219 Fed. 719.

The decision of Dayton, Judge, granted a temporary
injunction, but the decision of the Circuit Court of
Appeals reversed that decree, and remanded the cause

to the District Court with directions to dissolve the injunction and dismiss the bill, and is a final decree upon the merits. (Record, p. 193.)

NOTE.—Certain original papers, part of the Record, but not in the printed Record, are by stipulation of counsel and by order of the Court now in the custody of the Clerk of this Court. (Record, pp. 187, 188, 199.)

PRELIMINARY STATEMENT.

At its last term, this Court ordered that its consideration of the petition for a writ of certiorari be postponed until the case came on to be heard upon appeal, and at this present term the Court ordered that the case be heard upon appeal along with Case No. 43, otherwise known as Hitchman Coal and Coke Company, a corporation, petitioner, *v.* John Mitchell, individually; T. L. Lewis, individually; W. B. Wilson, individually, *et als.*, respondents, in which last case a writ of certiorari was granted March 13, 1916, directed to the Circuit Court of Appeals for the Fourth Circuit.

Along with its petition for a writ of certiorari, petitioner filed its brief in support thereof, and now asks that this brief be read in addition to that brief upon the questions presented by the petition for a writ of certiorari and that it be read as appellant's brief in support of its appeal.

I.

STATEMENT OF THE CASE.

From the Record on appeal, it appears that your petitioner, the Eagle Glass and Manufacturing Company, on July 28, 1913, commenced in the District Court of the United States for the Northern District of West Virginia a suit in equity for injunctive relief against the above

named respondents, averring among other things the following:

The plaintiff is a West Virginia corporation owning and operating a glass factory at Wellsburg, West Virginia, near Wheeling; and its trade is State and interstate.

It runs its works nonunion and has no contractual or other relation with the American Flint Glass Workers' Union, of which the respondents are officers or members.

The plaintiff makes individual contracts with its employes, which are evidenced by memorandum cards, signed by the men, reading as follows:

"WELLSBURG, W. VA.,

"I am employed by, and work for, the Eagle Glass and Manufacturing Company with the express understanding that I am not a member of the American Flint Glass Workers' Union, and will not become so while an employe of the Eagle Glass and Manufacturing Company, and that the Eagle Glass and Manufacturing Company is run nonunion, and agrees with me that it will run nonunion while I am in its employ. If at any time while I am employed by the Eagle Glass and Manufacturing Company I want to become connected with the American Flint Glass Workers' Union, or any affiliated organization, I agree to withdraw from the employment of said Company, and I agree that while I am an employe of that Company, I will not make any effort amongst its employes to bring about the unionizing of that Company's glass and manufacturing plant against that Company's wish.

"I have either read the above or heard the same read.

"....."

(Record, p. 9.)

And the controversy between plaintiff and defendants hinges upon efforts of the American Flint Glass Workers' Union to unionize plaintiff's factory.

In its bill, petitioner avers that

"the American Flint Glass Workers' Union is a secret voluntary organization, having certain expressed objects; that some of its objects are lawful and that others are unlawful; that it is in the endeavor to carry out its unlawful purposes, and also that it is in pursuit of its unlawful agreement, which your orator says it has, with said Associated Manufacturers, the matters and things herein complained of by your orator have arisen." (Record, p. 12.) and also avers

"that while said American Flint Glass Workers' Union has certain expressed objects, some lawful and others unlawful, as hereinbefore alleged, yet that the dominant purposes of said American Flint Glass Workers' Union are unlawful, and that the said organization is an illegal one, such lawful objects as it may have being tainted with the vice of its dominant unlawful purposes, separation of said lawful and unlawful purposes being impracticable."

(Record, p. 13.)

Besides that allegation, the bill (Record, pp. 11-37) sets forth in detail many of the provisions of the constitution and of the by-laws and rules and regulations of the organization, and in support of those allegations plaintiff filed as exhibits to the bill the original papers, hereinbefore mentioned as now in the custody of the Clerk of this Court, not in the printed Record.

The bill avers that with knowledge of its contractual relations with its employes, the American Flint Glass Workers' Union, acting through the respondents, is endeavoring to bring about breaches of those contracts by petitioner's employes, all in aid of an unlawful purpose by an unlawful organization to unionize plaintiff's factory against plaintiff's will.

II.

JURISDICTIONAL QUESTION IN THE DISTRICT COURT.

Upon filing its bill, an appearance was entered for the defendants, but the District Court later permitted the appearance to be withdrawn on counsel stating that he had appeared inadvertently, whereupon plaintiff filed an amended bill (Record, p. 167) making certain others of the respondents defendants, and they were duly served, whereupon the same counsel then appeared for them and filed their answers, admitting they were members of the American Flint Glass Workers' Union, denying they were officers or representatives, and saying they were not assisting their officers in their efforts to unionize plaintiff's factory. (Record, pp. 178, 180.)

Upon the hearing of its motion for a temporary injunction had upon the bill and its exhibits, the amended bill, answers, and the affidavits filed by plaintiff and by defendants, the Court awarded a temporary injunction. (Record, pp. 182-185.)

Whereupon defendants upon whom process had been served and for whom counsel appeared appealed to the Circuit Court of Appeals. In their assignment of errors (Record, pp. 186, 187) they say:

"1. It was an error to refuse to dismiss the bill and amended bill as to these defendants on the filing of their answer and affidavits.

"2. It was error to grant the temporary injunction as to these defendants on the case presented by the amended bill and the answer and affidavits.

"3. The Court had no jurisdiction to grant an injunction because there was no service of process on any of the parties named as defendants except on these defendants, and the Record shows that they are not really defendants, but are named as defend-

ants merely as a pretext resorted to by the plaintiff in order to get jurisdiction.

"4. Because the temporary injunction is granted against these defendants on the sole ground that they are members of the Union named in the bill."

III.

JURISDICTIONAL QUESTION IN CIRCUIT COURT OF APPEALS.

Plaintiff, the appellee in that Court, moved to dismiss the appeal as improvidently awarded (Record, pp. 190, 191), and stated

"The ground for said motion is that the decree in said cause which has been appealed from by the above named appellants, is a decree against the said appellants and divers other persons jointly, and said Record does not show that said other defendants have joined in said appeal or had been notified of the intention of the said appellants to take said appeal. Neither does said Record show any severance of said appellants from the other defendants named in said joint decree so as to permit said appellants to appeal to this Court separately from said joint defendants in the original cause. As authority for this motion, the following cases are cited:

"Hardie v. Wilson, 146 U. S. 179; Beardsley v. Ark., etc., Ry. Co., 158 U. S. 123; Estis v. Trabue, 128 U. S. 225; Grand Island, etc., R. R. Co. v. Sweeney, 95 F. 396; Hook v. Mercantile Trust Co., 95 F. 41; Dodson v. Fletcher, 78 F. 214; Motion to Reinstate Cause after Dismissal Denied, 79 F. 129."

and the cause came on to be heard on the motion to dismiss and on the merits.

IV.

DECISION OF THE CIRCUIT COURT OF APPEALS.

That Court (Record, pp. 191, 192) ruled against the sufficiency of the service upon the respondent Rowe and others, general officers of the Union, through the service had upon the additional defendants named in the amended bill, and then added

"All the questions involved in the merits of the appeal were decided adversely to the appellee by this Court in *Mitchell v. Hitchman Coal & Coke Co.*, 214 Fed. 685."

(Record, p. 193.)

and then entered an order

"that this cause be, and the same is hereby, remanded to the District Court of the United States for the Northern District of West Virginia, at Philippi, with directions to dissolve the injunction and dismiss the bill in accordance with the opinion of this Court."

(Record, p. 193.)

V.

ERRORS OF THE CIRCUIT COURT OF APPEALS.

(a) In overruling the motion to dismiss the appeal because there was no severance.

(b) In not holding the American Flint Glass Workers' Union to be an unlawful organization, there being no denial of the allegations of the bill on that subject. (Record, pp. 176, 177, 178, 180, 181.)

(c) In holding that plaintiff could not maintain its suit against Glasstetter and the other defendants brought in by amendment.

(d) In holding that Rowe and others, general officers of the Union, were not served and were not before the Court and, therefore, no relief could be given against them.

and in entering its decree

" 'that this cause be, and the same is hereby, remanded to the District Court of the United States for the Northern District of West Virginia, at Philippi, with directions to dissolve the injunction and dismiss the bill.' "

(Record, p. 198.)

VI.

SUMMARY.

Petitioner insists that upon the Record, and under the finding of the District Court, it sufficiently appears that the American Flint Glass Workers' Union is an unlawful organization under the authority cited by the District Court in its decision of the Hitchman case referred to in the opinion of the Circuit Court of Appeals, and that service upon any of the additional defendants named in the amended bill was sufficient to bring before the District Court the defendants to the original bill; that if, under the Record, the American Flint Glass Workers' Union is not an unlawful organization, then the service was sufficient under the provisions of Equity Rule 28.

" 'When the question is one of common or general interest to many persons constituting a class so numerous as to make it impracticable to bring them all before the Court, one or more may sue or defend for the whole.' "

(Record, p. 192.)

and under the ruling of this Court in

Lawlor et al. v. Loewe et al. (1915), 235 U. S. 522-537.

MEMBERS CANNOT ESCAPE LIABILITY BY A SIMPLE DENIAL OF KNOWLEDGE OF WHAT THEIR OFFICERS ARE DOING.

"Duties of Members.

"The members of this Union shall use all their influence to bring all eligible workmen into this Order."

National Constitution, Article III, Section 1. (Record, p. 15.)

"No nonunion man or boy shall be allowed to take a place to work at any of the trades represented in this A. F. G. W. U."

National Constitution, Article XXIV (printed XIV in Record), Section 2. (Record, p. 31.)

"It shall be the duty of all members to render the officers and committees of the Union proper aid and influence in the prosecution of their several duties."

Local Constitution, Article X, Section 4. (Record, p. 35.)

"Duties of Officers.

The President "shall try and revive weak locals and organize new ones where none exist, and where new factories start; to instruct Local Unions in our laws and workings, and to do all an organizer can do to strengthen the A. F. G. W. U. and bring every eligible person into the A. F. G. W. U. as members."

National Constitution, Article VII, Section 1. (Record, p. 18.)

The Vice-President "shall be the Chairman of the Executive Board."

National Constitution, Article VII, Section 3. (Record, p. 18.)

The duties of the Executive Board are "to try and revive weak Local Unions and organize new ones

where none exist and where new factories start; to instruct new Local Unions in our laws and workings, and to do all an organizer can do to strengthen the A. F. G. W. U. and bring every eligible person in his district into membership."

National Constitution, Article IX, Section 1.
(Record, p. 21.)

MEMBERS ARE CHARGED WITH KNOWLEDGE OF THE PURPOSES OF THEIR ORGANIZATION AND WITH HOW THEIR OFFICERS ARE IN THE HABIT OF CARRYING THEM OUT.

It is almost "inconceivable that the defendants, all living in the neighborhood of the plaintiffs, did not know what was done in the specific case. If they did not know that, they were bound to know the constitution of their societies and at least well might be found to have known how the words of those constitutions had been construed in act."

Lawlor et al. v. Loewe et al. (1915), 235 U. S. 534-536.

If neither of these is correct, then petitioner insists that the Circuit Court of Appeals should not have gone further than to have reversed the decree awarding the temporary injunction and then should have remanded the cause to the District Court to await service.

It was error to order the lower Court to dismiss the bill.

Respectfully submitted.

GEORGE R. E. GILCHRIST,
HANNIS TAYLOR,
Counsel for Petitioner.

GEORGE R. E. GILCHRIST,
Of Counsel.

WHEELING, W. VA., December 4, 1916.

Office Supreme Court, U. S.
FILED

DEC 7 1916

JAMES D. MAHER
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 109. 23

EAGLE GLASS & MANUFACTURING COMPANY,
APPELLANT,

v.s.

THOMAS W. ROWE, INDIVIDUALLY AND AS PRESIDENT OF
AMERICAN FLINT GLASS WORKERS' UNION, ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE FOURTH CIRCUIT.

BRIEF FOR WILLIAM J. HILL, PETER GLASSTETTER,
WILLIAM GREEN, HARRY THOMPSON, JULIUS W.
CRINKEY, GEORGE H. ROSS, WILLIAM E. SILCOX,
AND HARRY E. WALKER, APPELLEES, AND FOR
THE SAME PARTIES AS RESPONDENTS IN THE
PETITION FOR WRIT OF CERTIORARI; JOHN A.
HOWARD, COUNSEL FOR SAID APPELLEES AND
RESPONDENTS.

JOHN A. HOWARD,
Counsel for Appellees.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 109.

EAGLE GLASS & MANUFACTURING COMPANY,
APPELLANT,

vs.

THOMAS W. ROWE, INDIVIDUALLY AND AS PRESIDENT OF
AMERICAN FLINT GLASS WORKERS' UNION, ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE FOURTH CIRCUIT.

BRIEF FOR WILLIAM J. HILL, PETER GLASSTETTER,
WILLIAM GREEN, HARRY THOMPSON, JULIUS W.
CRINKEY, GEORGE H. ROSS, WILLIAM E. SILCOX,
AND HARRY E. WALKER, APPELLEES, AND FOR
THE SAME PARTIES AS RESPONDENTS IN THE
PETITION FOR WRIT OF CERTIORARI; JOHN A.
HOWARD, COUNSEL FOR SAID APPELLEES AND
RESPONDENTS.

Statement.

On July 28, 1913, the Eagle Glass and Manufacturing Company filed in the District Court of the United States for the Northern District of West Virginia, its bill in equity against Thomas W. Rowe, William J. Croke, William P.

Clarke, D. J. McGrail, and Joseph Gillooly, as individuals and as officers of the American Flint Glass Workers' Union.

As grounds for Federal jurisdiction it is alleged in the bill that the plaintiff is a citizen and resident of the State of West Virginia and that all of the defendants are citizens and residents of the State of Ohio.

As grounds for injunctive relief the most material and important averments of the bill are as follows:

a. That the complainant was engaged in the manufacture of glassware, had a large plant and a very extensive trade throughout the United States.

b. That the complainant operated its plant as a non-union factory, that is to say, it employed no members of the American Flint Glass Workers' Union.

c. That complainant has contracts with all of its employees in which it agrees to operate a non-union factory, and the employees agree to remain non-union men while in its employ.

d. That the defendants were the officers of the American Flint Glass Workers' Union, and were attempting to organize a local union of the American Flint Glass Workers' Union at Wellsburg, West Virginia, where its plant is situated, and were endeavoring to induce its employees to become members of said labor union. That is to say, that the defendants were attempting to unionize the complainant's factory.

e. That the American Flint Glass Workers' Union is an unlawful organization.

On the date the bill was filed a restraining order was entered, without notice, and process issued.

On the following day, July 29, 1916, process in the suit and a copy of the restraining order were served on the de-

fendant Joseph Gillooly, he being a resident of West Virginia, came into court, pleaded and established that fact, and the bill was dismissed as to him.

None of the other defendants were served, but a motion for an injunction against them was made, notwithstanding the fact that they had not been served with process and had not waived process, plaintiff's counsel insisting that they had appeared in the case by counsel. This issue was decided against the plaintiff, and the case stood for some time a case with no defendants on whom process could be served.

On November 27, 1913, the plaintiff filed an amended bill, bringing in as new parties these appellees, William J. Hill, Peter Glasstetter, William Green, Harry Thompson, Julius Crinkey, George H. Ross, William E. Silcox, and Harry E. Walker. The charges made against these new defendants in the amended bill are as follows:

That they are citizens and residents of the State of Ohio; that they are members of the American Flint Glass Workers' Union; that they have as members of said American Flint Glass Workers' Union created Rowe, Croke, Clarke, McGrail, and Gillooly, their agents, as officers and representatives of said American Flint Glass Workers' Union; that they have assisted and are now supporting said Rowe, Croke, Clarke, McGrail, and Gillooly in their efforts to unionize plaintiff's employees, and to force plaintiff to recognize said American Flint Glass Workers' Union, and that they (the said new defendants) are as members of the said American Flint Glass Workers' Union, representatives of said union.

(Printed Record, 168-169.)

The new parties brought in by the amended bill (these appellees), residing at Steubenville, Ohio, and being employed at Follansbee, West Virginia, were served with process. They came promptly into court and filed the following answers and affidavits:

Answer of W. J. Hill et al.

(Filed Dec. 16, 1913.)

In Equity.

EAGLE GLASS & MANUFACTURING COMPANY

vs.

THOMAS W. ROWE ET ALS.

The Joint Answer of the Defendants, William J. Hill, Julius W. Crinkey, and Peter J. Glasstetter.

To the honorable judge of said court:

These respondents, answering the bill of complaint and the amended bill of complaint in the above-styled suit, say:

First. It is true that they are citizens and residents of the State of Ohio.

Second. Concerning the allegations of the original bill of complaint and the allegations contained therein, these respondents say that they have no knowledge of whether the things therein alleged to have been done by the other defendants are true or not, and that, in so far as the said allegations may affect the rights of these respondents, they call for strict proof thereof.

Third. These defendants deny that the defendants, Thomas W. Rowe, W. J. Croke, William P. Clarke, D. J. McGrail, and Joseph Gillooly are agents or representatives of these respondents. And these respondents further deny as alleged in the amended bill of complaint that they have assisted or supported said Rowe, Croke, Clarke, McGrail, and Gillooly in their alleged efforts to unionize the plaintiff's

employees and to force the plaintiff to recognize the American Flint Glass Workers' Union.

Third. These respondents admit that they are members of a local union of glass workers at Steubenville, Ohio, which local union is affiliated with the American Flint Glass Workers' Union, and that, except their relation as members of their local union, they have no connection or relation whatever with the other defendants; that they are not officers, agents, representatives, or organizers of their local union, or of the American Flint Glass Workers' Union, and that even in their capacity as members of their local union they have not by any act, word, or deed of theirs in any manner authorized, assisted, aided, or abetted or encouraged any of the other defendants in doing any of the things alleged against them (the other defendants) in the bill of complaint or the amended bill of complaint.

And these respondents, having fully answered in so far as they have any knowledge of the matters alleged in the bill, pray that they may be hence dismissed with their costs in this behalf expended. And for this they will ever pray.

WILLIAM J. HILL.
PETER J. GLASSTETTER.
JULIUS W. CRINKEY.

JOHN A. HOWARD,
Solicitor for Respondents.

Answer of George H. Ross et al.

(Filed Jan'y 14, 1914.)

In Equity.

EAGLE GLASS & MANUFACTURING COMPANY

vs.

THOMAS W. ROWE ET AL.

The Joint and Several Answer of George H. Ross, William Green, William E. Silcox, Harry Thompson, and Harry E. Walker.

To the honorable judge of the said court:

These respondents, answering the bill of complaint and the amended bill of complaint in the above-styled suit, say:

First. It is true that they are citizens and residents of the State of Ohio.

Second. Concerning the allegations of the original bill of complaint and the allegations contained therein, these respondents say that they have no knowledge of whether the things therein alleged to have been done by the other defendants are true or not, and that, in so far as the said allegations may affect the rights of these respondents, they call for strict proof thereof.

Third. These defendants deny that the defendants, Thomas W. Rose, W. J. Croke, William P. Clarke, D. J. McGrail, and Joseph Gillooly are agents or representatives of these respondents. And these respondents further deny as alleged in the amended bill of complaint that they have assisted or supported said Rowe, Croke, Clarke, McGrail, and Gillooly in their alleged efforts to unionize the plain-

tiff's employees and to force the plaintiff to recognize the American Flint Glass Workers' Union.

Third. These respondents deny, as alleged in the sixth paragraph of the amended bill, that they, these respondents, are as members of American Flint Glass Workers' Union representatives of said union.

Fourth. These respondents admit that they are members of a local union of glass workers at Steubenville, Ohio, which local union is affiliated with the American Flint Glass Workers' Union, and that, except their relation as members of their local union, they have no connection or relation whatever with the other defendants; that they are not officers, agents, representatives or organizers of their local union, or of the American Flint Glass Workers' Union, and that even in their capacity as members of their local union they have not by any act, word, or deed of theirs in any manner authorized, assisted, aided or abetted or encouraged any of the other defendants in doing any of the things alleged against them (the other defendants) in the bill of complaint or the amended bill of complaint.

And these respondents, having fully answered in so far as they have any knowledge of the matters alleged in the bill, pray that they may hence be dismissed with their costs in this behalf expended. And for this they will ever pray.

GEORGE H. ROSS,
WILLIAM GREEN,
WILLIAM E. SILCOX,
HARRY THOMPSON,
HARRY E. WALKER,

By JOHN A. HOWARD,

Their Solicitor.

Solicitor for Respondents.

Affidavit of W. J. Hill et al.

(Filed Dec. 16, 1913.)

In Equity.

EAGLE GLASS & MANUFACTURING COMPANY

vs.

THOMAS W. ROWE ET ALS.

STATE OF WEST VIRGINIA,

County of Barbour, To wit:

William J. Hill, Julius W. Crinkey, and Peter Glasstetter, being duly sworn by the undersigned notary public, say, upon their oaths, as follows:

First, They are defendants in the above-styled suit, having been made parties defendant by the amended bill filed therein.

Second, They are residents and citizens of the State of Ohio, living at Steubenville, Ohio, and working as glass workers at Follansbee, West Virginia.

Third, They are not officers, agents, organizers, or representatives of the American Flint Glass Workers' Union. They have no connection whatever with the said union, except that they are members of a local union which is affiliated with the said American Flint Glass Workers' Union. They are not officers of the local union, they have nothing whatever to do with the management or control of the local union, of which they are members, or of the control or management of the American Flint Glass Workers' Union. They have nothing whatever to do with the local union at Wellsburg, West Virginia.

Fourth, They have not had anything to do with

any attempt to organize a union at Wellsburg, West Virginia. They have not, in any manner, by any act of theirs, aided or assisted any of the other defendants or any other person or persons whatever in any effort to induce the plaintiff's employees to join the American Flint Glass Workers' Union, or to join any union whatever.

Fifth. They have no knowledge whatever of any of the things alleged in the bill of complaint and in the amended bill against the other defendants, and they have not aided, assisted, encouraged, or authorized any of the other defendants in aiding or attempting to do any of the things alleged against them in said bill of complaint, or in the said amended bill of complaint.

Sixth. It is not true, as alleged in the amended bill, that the defendants, Thomas W. Rowe, William Croke, William P. Clark, and D. J. McGrail, have been created by the affiants as their agents or representatives, and it is not true that they have assisted or that they are now supporting the said Rowe, Clark, Croke, McGrail, and Gillooly in their effort to unionize plaintiff's employees to force plaintiff to recognize the American Flint Glass Workers' Union, and these affiants say that on the contrary, they have not created or constituted any of the said other defendants as their agents or representatives. It is not true that they have by any act, word, or deed of their own in any manner assisted or supported the said other defendants in their alleged efforts to unionize the plaintiff's employees.

Seventh. These affiants further say that it is not true, as alleged in the amended bill of complaint, that they, these affiants, are representatives of the American Flint Glass Workers' Union.

Eighth. And these affiants further say it is not true,

as alleged in the amended bill of complaint, that they are the committee, agents, servants, confederates or associates of the other defendants named therein.

Ninth. These affiants further say that, as they are advised and believe, the act of the plaintiff in making them parties to this suit is wholly unwarranted by the facts and that they, these affiants, are informed and believe that the plaintiff has, without warrant of any existing facts, made them parties to this suit for the purpose of establishing a fictitious case in which the said plaintiff may maintain this suit in the Federal court.

Tenth. And these affiants further say, concerning the various matters alleged in the bill of complaint and brought into consideration here by reference made to the said bill of complaint and the amended bill, that they have no knowledge whatever of whether the allegations therein alleged against the other defendants are true or not, but these affiants say without hesitation or qualification that they have not by any act, word, or deed of theirs at any time authorized, aided, assisted, encouraged or taken any part in the doing of any of the things alleged to have been done or alleged to have been threatened, or attempted by any of the other defendants.

Eleventh. These affiants say that everything said hereinbefore in this affidavit by these three jointly is here repeated and said severally by each of them. And further affiants sayeth not.

WILLIAM J. HILL.

PETER J. GLASSTETTER.

JULIUS W. CRINKEY.

Taken, sworn to, and subscribed before me this 16th day of December, 1913.

H. J. WILCOX,

Notary Public.

My commission expires September 10, 1916.

No effort whatever was made by the plaintiff to prove the averments of the amended bill as to these appellees, and no proof or evidence in any form was introduced, except the said affidavits.

The motion for a temporary injunction was thereupon granted and the injunction issued against the original defendants and against these appellees.

These appellees took their appeal to the United States Circuit Court of Appeals for the Fourth Circuit, which appellate court, on the 13th of January, 1915, reversed the decree of injunction and remanded the case to the District Court, with the instructions to dissolve the injunction and dismiss the bill.

The case comes to this court on the appeal allowed by United States Circuit Judge C. A. Woods, on the motion of the Eagle Glass & Manufacturing Company.

The said company has also filed in this court its motion and petition for a writ of certiorari.

The Real Question Presented by This Record is a Question of Fact.

Were these appellees, William J. Hill, Peter Glasstetter, William Green, Harry Thompson, Julius W. Crinkey, George H. Ross, William E. Silcox, Harry E. Walker, guilty of the wrongful acts charged against them in the amended bill? Were the facts established sufficient to warrant the court in granting the injunction against them?

They had not been charged with any specific overt act. They had only been charged in the most general terms with responsibility for the acts of the officers of the American Flint Glass Workers' Union. There was no proof or evidence in any form even tending to prove the averment of the amended bill against them. They filed answers, in which they fully and completely denied all knowledge of the matters alleged in the bill; denied any participation in any of

the wrongful acts charged; denied that Rowe and other officers of the union represented them; denied that they (these appellees) represented the union; denied that they did any of the acts charged in the amended bill or that they authorized or had any knowledge of any other person doing any of the wrongful acts charged in the amended bill.

They supported their answers by their affidavits, and upon that showing the injunction was granted against them by the District Court and reversed by the United States Circuit Court of Appeals.

We submit that there was no showing of fact whatever to warrant the injunction against these appellees, that for that reason the United States Circuit Court of Appeals properly reversed the decree of the District Court.

The Petitioner's Brief Filed with the Petition for Writ of Certiorari.

The petitioner presents a very elaborate argument, and cites many authorities in support of the acts charged against Rowe, Croke, Clarke, and McGrail, who were the original defendants and the officers of the American Flint Glass Workers' Union, but they are not in court. The writer of this brief is not appearing for them, and does not consider that said brief applies to his clients, these appellees, and therefore refrains from any discussion of said brief or the matters of law therein considered.

Is Mere Membership in a Labor Union Enough to Hold the Members Responsible for the Acts of the Officers?

The United States Circuit Court of Appeals in deciding this case answered this question in the negative, citing in support of that view:

Pettibone vs. United States, 148 U. S., 197.

Lawlor vs. Loewe, 209 Fed., 721.

In *Lawlor vs. Loewe* there was some evidence tending to prove that the members knew or "ought to have known" of the acts of the officers. In this case there is no evidence showing or tending to show knowledge on the part of these members of the union or that they participated. On the contrary, the only evidence introduced on the subject shows conclusively that they did not participate in or authorize the acts complained of and that they had no knowledge of the same.

We respectfully submit that this appeal should be dismissed, and that the petition for writ of certiorari should be denied.

JOHN A. HOWARD,
Counsel for Appellees.

Syllabus.

EAGLE GLASS & MANUFACTURING COMPANY v.
ROWE, INDIVIDUALLY AND AS PRESIDENT
OF THE AMERICAN FLINT GLASS WORKERS'
UNION, ET AL.

APPEAL FROM AND CERTIORARI TO THE CIRCUIT COURT OF
APPEALS FOR THE FOURTH CIRCUIT.

No. 23. Submitted December 18, 1916.—Decided December 10, 1917.

In a suit to restrain alleged concerted wrongful conduct upon the part of officials of a labor union, a temporary injunction should not be granted against those who were not served and did not submit themselves to the jurisdiction.

The bill alleged that the answering defendants had constituted other persons named as defendants their agents and representatives and had assisted and were supporting them in their alleged wrongful conduct. *Held*, in view of specific denials and supporting affidavits, not rebutted, that the Circuit Court of Appeals did not err in dissolving the temporary injunction.

Where an application for a temporary injunction has been submitted upon affidavits taken *ex parte*, without opportunity for cross-examination, and without any consent that the court proceed to final determination of the merits, it is error for the Circuit Court of Appeals upon interlocutory appeal to direct a dismissal of the bill unless on its face there is no ground for equitable relief.

The plaintiff's bill set up a contract with its employees identical in form with the contract involved in *Hitchman Coal & Coke Co. v. Mitchell*, *ante*, 229, and charged defendants with the formation and pursuit of a scheme to "unionize" the plaintiff's shop by interfering with its employees similar in nature, motive and methods to the scheme held illegal in that case. *Held*, that the bill stated an equitable cause of action, and that it was error for the Circuit Court of Appeals to dismiss it on interlocutory appeal without affording plaintiff an opportunity to prove the allegations upon final hearing, as against the defendants within the jurisdiction.

219 Fed. Rep. 719, affirmed in part and reversed in part.

THE case is stated in the opinion.

Mr. George R. E. Gilchrist and Mr. Hannis Taylor for appellant and petitioner.

Mr. John A. Howard for appellees and respondents.

MR. JUSTICE PITNEY delivered the opinion of the court.

This case is quite similar to *Hitchman Coal & Coke Co. v. Mitchell*, No. 11, this day decided, *ante*, 229, and was submitted at the time of the argument of that case. It was a suit in equity, commenced July 28, 1913, in the United States District Court for the Northern District of West Virginia. This was after that court had rendered its final decree in the *Hitchman Case* (202 Fed. Rep. 512), and the decree awarding a temporary injunction herein was made before the reversal of the final decree in the *Hitchman Case* by the Circuit Court of Appeals (214 Fed. Rep. 685).

The plaintiff, Eagle Glass & Manufacturing Company, is a West Virginia corporation, having its principal office and its manufacturing plant in that State. The object of the bill was to restrain the defendants, officers and members of the American Flint Glass Workers' Union, a voluntary association having its principal office at Toledo, in the State of Ohio, from interfering with the relations existing between plaintiff and its employees for the purpose of compelling plaintiff to "unionize" its factory. The original defendants, Thomas W. Rowe, Joseph Gillooly, and three others, were among the chief executive officers of the Union, and were sued individually and as such officers. The federal jurisdiction was invoked on the ground of diversity of citizenship, it being alleged that all of the defendants were citizens of the State of Ohio.

Upon the filing of the bill, with numerous affidavits verifying its averments, and showing that plaintiff's factory was run as a non-union shop under individual agreements with its employees, each employee having signed a

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paper declaring that he was not a member of the American Flint Glass Workers' Union and would not become a member while an employee of the Eagle Company, that the company agreed that it would run non-union while he was in its employ, that if at any time while so employed he desired to become connected with the Union he would withdraw from the employ of the company, and that while in its employ he would not make any effort amongst its employees to bring about the unionizing of the plant against the company's wish; that the defendants, with notice of this, were making efforts, through Gillooly as organizer, and threatening further efforts to induce some of plaintiff's employees to quit its employ, and to persuade others secretly to join the Union and remain at work in plaintiff's factory contrary to the terms of their agreement until a sufficient number had joined so as to be able by threatening to quit in a body to compel the unionization of the shop; and that by the activities of defendants the plaintiff was threatened with irreparable injury; the District Court granted a restraining order.

Process requiring defendants to answer the bill was promptly issued, but was served upon Gillooly alone, together with the restraining order. At the request of an attorney, a general appearance was entered for the other defendants. Gillooly filed an answer, amounting to a plea to the jurisdiction of the court, based upon the allegation that he was a resident and citizen of the State of West Virginia, and not of the State of Ohio as alleged in the bill. Upon this answer and affidavits in support of it he moved to dissolve the restraining order and dismiss plaintiff's suit, and thereupon, on the ground that he was a citizen of West Virginia, an order was made dismissing the bill as to him, without prejudice, and retaining the suit as to the other defendants. Plaintiff moved for a temporary injunction against them, whereupon the attorney at whose request their appearance had been entered moved to strike

it out on the ground that his request was due to inadvertence and in fact he had no authority to appear for them. His motion was granted; but in the meantime plaintiff obtained leave to file and did file an amended bill, adding as defendants Peter J. Glasstetter and seven other parties named, residents of Steubenville, Ohio, and citizens of that State, and averring that they were members of the American Flint Glass Workers' Union, had constituted the original defendants, including Gillooly, their agents and representatives, and had assisted and were supporting them in their efforts to unionize plaintiff's employees and to force plaintiff to recognize the Union. Process to answer the amended bill was issued and was served upon the added defendants, the remaining original defendants being returned "not found." Afterwards, and upon proper notice to the served defendants, plaintiff renewed its motion for a temporary injunction, basing it upon the original bill, exhibits, and accompanying affidavits, the amended bill, and some additional affidavits. Meanwhile the served defendants, who may be called the Steubenville defendants, filed answers denying knowledge of the matters alleged in the bill, denying that they had constituted Gillooly and the other original defendants their agents or representatives, or had assisted or supported them in the effort to unionize plaintiff's employees and force plaintiff to recognize the American Flint Glass Workers' Union, admitting that they were members of a local union of glass workers at Steubenville which was affiliated with the principal Union, and averring that except their relation as members of the local union they had no connection or relation with the other defendants, were not officers, agents, representatives, or organizers of the Union, and even in their capacity as members of their local had not by act, word, or deed authorized, assisted, aided, or encouraged any of the other defendants in doing any of the things alleged in the bill or amended bill.

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These answers were supported by affidavits of the answering defendants which were not specifically rebutted by the plaintiff.

The court, having struck out the entry of appearance for the original defendants other than Gillooly, made a decree granting a temporary injunction to restrain the defendants in the cause from interfering with plaintiff's employees, the form of the injunction being modeled upon that ordered by the final decree made in *Hitchman Coal & Coke Co. v. Mitchell*.

The answering defendants appealed to the Circuit Court of Appeals, and that court (219 Fed. Rep. 719) reversed the decree: holding that as the Steubenville defendants submitted affidavits that they were only members, not officers, of a local union, that the original defendants, who were the general officers of the Union, were not authorized to represent them in the alleged illegal acts, and that they knew nothing of the efforts to unionize plaintiff's factory, and as plaintiff had made no showing to the contrary, it was erroneous to issue a temporary injunction against the defendants (other than Gillooly) named in the bill and amended bill; that as Rowe and the other general officers were not served, no relief could be given against them unless it could be said that they were brought before the court by representation when the Steubenville defendants were brought in; and that as plaintiff had no case against the latter defendants for participation in the alleged torts, there was no such common or general interest as authorized a decree against the defendants not served by virtue of the service upon and appearance of the Steubenville defendants. Having said this to show error in the decree awarding a temporary injunction, the court concluded its opinion as follows: "All the questions involved in the merits of the appeal were decided adversely to the appellee by this court in *Mitchell v. Hitchman Coal & Coke Co.*, 214 Fed. Rep. 685."

Thereupon a decree was made reversing the decree of the District Court, and remanding the cause with directions not only to dissolve the injunction, but to "dismiss the bill in accordance with the opinion of this court." The mandate was stayed pending application to this court for a writ of certiorari. Afterwards an appeal was allowed by one of the Circuit Court judges, together with a supersedeas. The transcript on appeal having been filed in this court, an application for a writ of certiorari was afterwards presented, consideration of which was postponed to the hearing of the appeal.

Since it appears from the averments of the bill and amended bill that the federal jurisdiction was invoked solely upon the ground of diversity of citizenship, it is evident that, as in the *Hitchman Case*, the appeal must be dismissed. 241 U. S. 644. But, as in that case, we grant the writ of certiorari, the record on appeal to stand as the return to the writ. And, as the case was submitted on the merits, we proceed to dispose of them.

So far as the decision of the Circuit Court of Appeals dissolved the temporary injunction upon the ground that the Steubenville defendants had denied, and plaintiff had not adduced sufficient evidence to sustain, the averment of the amended bill that they had constituted Gillooly and the other original defendants their agents and representatives and had assisted and supported them in their efforts to unionize plaintiff's employees and force plaintiff to recognize the American Flint Glass Workers' Union, we see no reason to disturb the decision.

But the court went further, and directed a dismissal of the bill. Since the cause had not gone to final hearing in the District Court, the bill could not properly be dismissed upon appeal unless it appeared that the court was in possession of the materials necessary to enable it to do full and complete justice between the parties. Where by consent of parties the case has been submitted for a final de-

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termination of the merits, or upon the face of the bill there is no ground for equitable relief, the appellate court may finally dispose of the merits upon an appeal from an interlocutory order. *Smith v. Vulcan Iron Works*, 165 U. S. 518, 525; *Mast, Foos & Co. v. Stover Mfg. Co.*, 177 U. S. 485, 494; *Castner v. Coffman*, 178 U. S. 168, 184; *Harriman v. Northern Securities Co.*, 197 U. S. 244, 287; *U. S. Fidelity Co. v. Bray*, 225 U. S. 205, 214; *Denver v. New York Trust Co.*, 229 U. S. 123, 136. But in this case the application for a temporary injunction was submitted upon affidavits taken *ex parte*, without opportunity for cross-examination, and without any consent that the court proceed to final determination of the merits. Hence there was no basis for such a determination on appeal unless it appeared upon the face of the bill that there was no ground for equitable relief. That this was in effect the decision of the Circuit Court of Appeals is evident from the fact that it was rested upon the authority of *Mitchell v. Hitchman Coal & Coke Co.* In that case the same court had expressed the following opinion (214 Fed. Rep. 685, 714):

"The court below also reached the conclusion that the defendants have caused and are attempting to cause the nonunion members employed by the plaintiff to break a contract which it has with the nonunion operators. The contract in question is in the following language:

"I am employed by and work for the Hitchman Coal & Coke Company with the express understanding that I am not a member of the United Mine Workers of America, and will not become so while an employ  of the Hitchman Coal & Coke Company; that the Hitchman Coal & Coke Company is run nonunion and agrees with me that it will run nonunion while I am in its employ. If at any time while I am employed by the Hitchman Coal & Coke Company I want to become connected with the United Mine Workers of America, or any affiliated organization, I agree

to withdraw from the employment of said company, and agree that while I am in the employ of that company (that) I will not make any efforts amongst its employes to bring about the unionizing of that mine against the company's wish. I have either read the above or heard the same read.'

"It will be observed that by the terms of the contract (that) either of the parties thereto may at will terminate the same, and while it is provided that so long as the employé continues to work for the plaintiff he shall not join this organization, nevertheless there is nothing in the contract which requires such employés to work for any fixed or definite period. If at any time after employment any of them should decide to join the defendant organization, the plaintiff could not under the contract recover damages for a breach of the same. In other words, the employés under this contract, if they deem proper, may at any moment join a labor union, and the only penalty provided therefor is that they cannot secure further employment from the plaintiff. Therefore, under this contract, if the nonunion men, or any of them, should see fit to join the United Mine Workers of America on account of lawful and persuasive methods on the part of the defendants, and as a result of such action on their part were to be discharged by the plaintiff, it could not maintain an action against them on account of such conduct on their part. Such being the case, it would be unreasonable to hold that the action of the defendants would render the United Mine Workers of America liable in damages to the plaintiff because they had employed lawful methods to induce the nonunion miners to become members of their organization.

"Under these circumstances, we fail to see how this contract can be taken as a basis for restraining the defendants from using lawful methods for the purpose of inducing the parties to the contract to join the organization."

This reasoning, essential to the decision reached, is

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erroneous for several reasons, as we have now held in reversing the *Hitchman* decree, viz: (a) because plaintiff was entitled by law to be protected from interference with the good will of its employees, although they were at liberty to quit the employment at pleasure; (b) because the case involved no question of the rights of employees, and their right to quit the employment gave to defendants no right to instigate a strike; and (c) because the methods pursued by the defendants were not lawful methods.

The present case, according to the averments of the bill and amended bill, differs from the *Hitchman Case* principally in this: that it appeared that Gillooly, as organizer, had used money and had threatened to use dynamite to reinforce his other efforts to coerce plaintiff into agreeing to the unionization of its works. The system of employment at the Eagle Glass Co. factory was precisely the same as that at the Hitchman mine. The written contract of employment inaugurated at the Eagle Glass Works more than a month prior to the filing of the bill in this case followed precisely the form established at the Hitchman mine shortly after the filing of the bill in that case. And the activities of Gillooly among the plaintiff's employees, and the motive and purpose behind those activities, as alleged in the bill, show the same elements of illegality to which we have called attention in our opinion in the *Hitchman Case*. Plaintiff is entitled to an opportunity, on final hearing, to prove these allegations as against those defendants who are within the jurisdiction of the court, and to connect them with the activities of Gillooly.

The decree of the Circuit Court of Appeals, so far as it directed that the temporary injunction be dissolved will be affirmed, but so far as it directed a dismissal of the bill it must be reversed, and the cause will be remanded to the District Court for further proceedings in conformity to this opinion.

Decree reversed.

MR. JUSTICE BRANDEIS, dissenting.

This suit was commenced July 28, 1913, in the District Court of the United States for the Northern District of West Virginia. The plaintiff, the Eagle Glass and Manufacturing Company is a West Virginia corporation having its principal place of business in that State. The defendants, Rowe and four others, were then the chief executive officers of the American Flint Glass Workers' Union. The defendants were sued individually and as such officers. Jurisdiction was rested wholly on diversity of citizenship, defendants being alleged to be all citizens of Ohio.

Plaintiff's factory was run as a non-union shop under individual agreements with its employees by which each was required, as a condition of employment, to sign an agreement that he would withdraw from plaintiff's employment if he joined the union. The employment was terminable at the will of either party. The bill alleged that defendants were conspiring to unionize its factory, and prayed that they, their agents and associates be enjoined from interfering with plaintiff's employees "for the purpose of unionizing your orator's glass factory without your orator's consent." District Judge Dayton granted a sweeping restraining order, which enjoined defendants, among other things, from picketing "for the purpose of interviewing or talking to any person or persons on said railroad or street cars coming to or near plaintiff's glass factory to accept employment with plaintiff, for the purpose . . . of inducing . . . them by . . . persuasion . . . to refuse or fail to accept service with plaintiff" and from the use of "persuasion or entreaty" to induce any person in its employ to leave the same.

Only one of the five defendants named in the bill was served with process. He, Gillooly, filed an answer alleging that he was a citizen and resident of West Virginia; and

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a hearing was had upon the issue thus raised. The court, being satisfied that Gillooly was a citizen of West Virginia, ordered, on August 13, 1913, that the bill be dismissed as to him "without prejudice"; and directed that the bill be retained as to all other defendants named therein. Plaintiff then moved for a temporary injunction. But the counsel who had formerly represented Gillooly called the attention of the court to the fact that there was then before the court no person against whom an injunction could issue, since he had entered his appearance only for Gillooly and did not intend to appear for the other defendants who had not been served. He accordingly moved, on his own behalf, that the record be corrected. This motion was heard October 27, 1913, was taken under advisement and was granted on January 17, 1914. But meanwhile, on November 27, 1913, the District Judge granted plaintiff leave to amend its bill by adding as defendants eight other citizens of Ohio who, it alleged, were members of the American Flint Glass Workers' Union and "have assisted and are now supporting" the five persons originally named as defendants.

The eight members of the union, so joined as defendants by the amended bill, being served with process within the State of West Virginia, filed on January 14, 1914, their sworn answers to the bill, alleging among other things:

"Fourth. These respondents admit that they are members of a local union of glass workers at Steubenville, Ohio, which local union is affiliated with the American Flint Glass Workers' Union, and that, except their relation as members of their local union, they have no connection or relation whatever with the other defendants, that they are not officers, agents, representatives or organizers of their local union, or of the American Flint Glass Workers' Union, and that even in their capacity as members of their local union they have not by any act, word, or deed of

theirs in any manner, authorized, assisted, aided or abetted or encouraged any of the other defendants in doing any of the things alleged against them, (the other defendants) in the bill of complaint or the amended bill of complaint."

The allegation in the answer was supported by further affidavits of the parties, which were uncontradicted. The District Court, nevertheless, granted on January 17th, 1914, a temporary injunction against all the then defendants (including these eight) substantially in the terms of the restraining order.

On January 30, 1914, the eight took an appeal to the Circuit Court of Appeals, assigning as errors, among others:

"3. The court had no jurisdiction to grant an injunction because there was no service of process on any of the parties named as defendants except on these defendants, and the record shows that they are not really defendants, but are named as defendants merely as a pretext resorted to by the plaintiff in order to get jurisdiction.

"4. Because the temporary injunction is granted against these defendants on the sole ground that they are members of the union named in the bill."

On January 13, 1915, the Circuit Court of Appeals unanimously reversed the decree of the District Court with directions to dissolve the injunction and dismiss the bill, (219 Fed. Rep. 719), saying, among other things:

"Rowe and others, general officers of the Union, were not served, and, therefore, no relief could be given against them, unless it could be said they were brought before the court by representation when Glasstetter and others, mere members of the local union, were ordered to be made parties and appeared. . . .

"When the allegation of a general or common interest to many persons is denied, the duty devolves on the court to determine whether the common or general interest exists before decreeing against those who are alleged to be in

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court by representation. The plaintiff had no pretense of a case against Glasstetter and the other defendants brought in by amendment for participating or aiding the defendants not served, in the alleged torts committed by them, and, therefore, there was no such common or general interest as authorized the court's decree against the defendants served, by virtue of the service and appearance of the defendants brought in by amendment."

Plaintiff took an appeal to this court, and also filed a petition for writ of certiorari. The decision upon the petition was postponed.

It is clear that the appeal must be dismissed, as the jurisdiction of the District Court rests wholly upon diversity of citizenship. *Hitchman Coal & Coke Co. v. Mitchell*, 241 U. S. 644. The petition for certiorari having been granted, the decree should, in my opinion, be affirmed for the reasons stated by the Circuit Court of Appeals and in the dissent in *Hitchman Coal & Coke Co. v. Mitchell*, ante, 229.

MR. JUSTICE HOLMES and MR. JUSTICE CLARKE concur in this dissent.